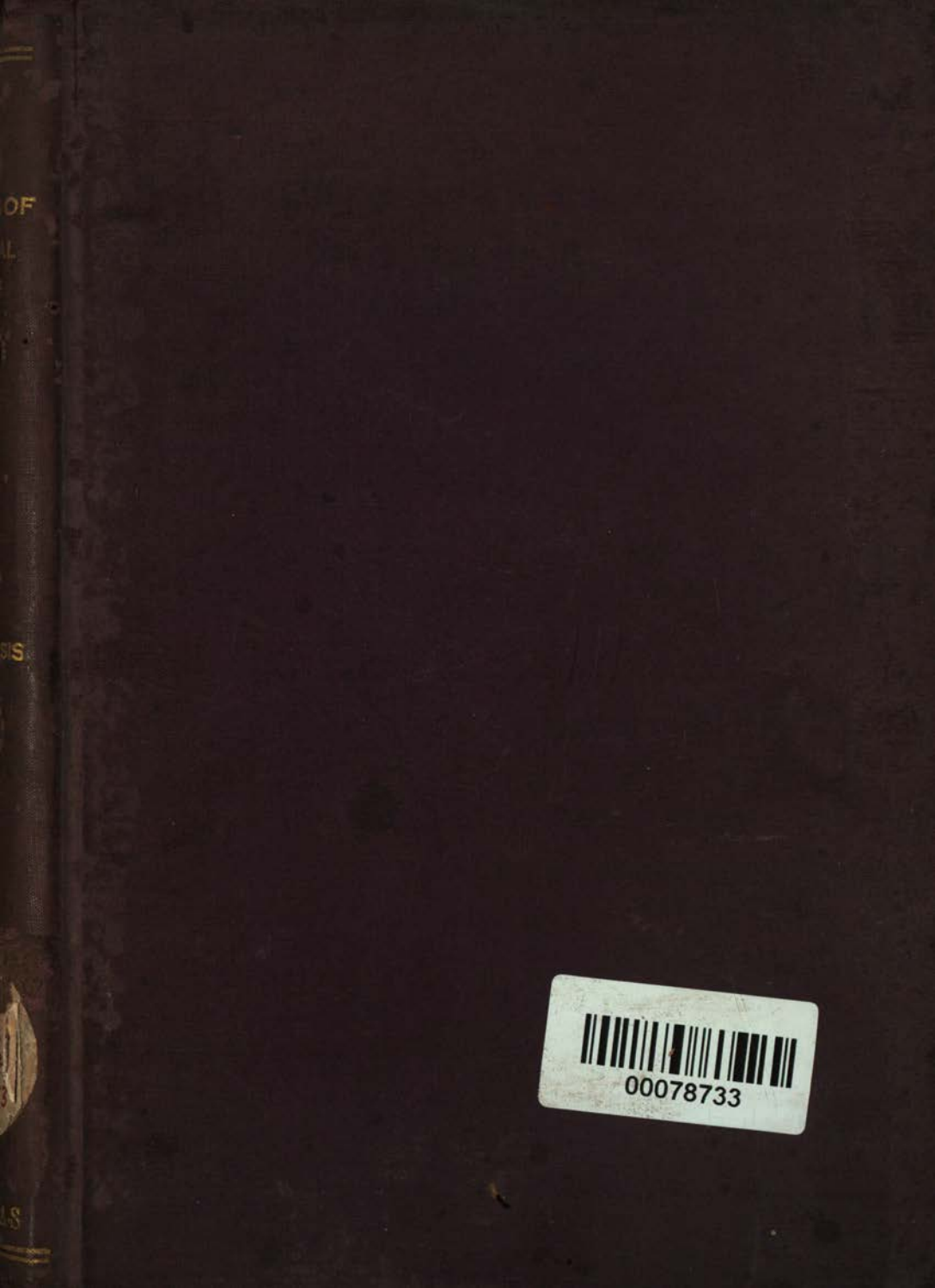
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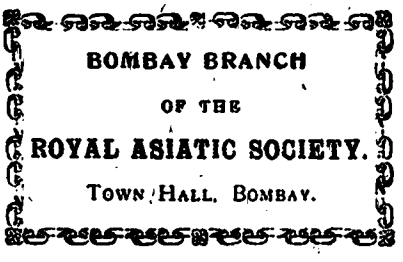

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REPORTS OF CRIMINAL CASES

DETERMINED IN THE

COURT OF

SUDDER FOUJDAREE ADAWLUT,

OF

Bombay.

345.54
78733

COMPILED BY

A. F. BELLASIS, Esq., B.C.S.,

DEPUTY REGISTRAR OF THAT COURT.

VOLUME I.—1827 TO 1846.

Bombay:

PRINTED AT THE GOVERNMENT PRESS.

1849.

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ADVERTISEMENT.

In the absence of any Criminal Reports illustrative of the Bombay Code of Regulations, the following collection has been prepared.

The Code, which, with certain additions, abrogations, and amendments, now constitutes the Law of this Presidency, for the most part came into operation from and after the 1st day of September 1827.* The decisions recorded in the following Reports have therefore been selected from Cases that originated subsequent to that date. They are intended to illustrate the application of the Law, both in questions of evidence, and of punishment, and also to settle doubtful points of procedure and practice.

* Vide Regulation XXVIII. of 1827, passed by the Governor in Council of Bombay on the 1st of August, A. D. 1827.

INTRODUCTION.

For the right understanding of the following Reports, it may be well to trace the various changes the constitution of the Sudder Court has undergone since its first institution; otherwise, confusion might arise from the mention, in the earlier of them, of some functionaries no longer in existence, and of others whose powers have been considerably altered or modified.

In the Western Presidency of India, the territorial possessions of the Honourable the East India Company were, even to within a recent period, comparatively limited. In the year 1805, they consisted only of the Islands of Bombay, Salsette, and Caranjah, and the Cities of Surat, Kaira, and Broach, with their dependencies; nor did they receive any great addition until the years 1817 and 1818. The civil and criminal business being consequently limited also, its supervision was in the first instance entrusted to the Governor in Council, who, in a Separate Department, sat as a Court of Sudder Adawlut for the disposal of appeals in civil matters, and as a Superior Criminal Tribunal for the decision of criminal matters.

During the years 1817 and 1818, the Deccan, Khandeish, the two Konkuns, and the greater part of Guzerat, came under the

Company's administration, partly by conquest from His Highness the Peishwa, and partly by treaties contracted with His Highness the Guickwar, and other Chiefs, and were permanently annexed to the Bombay Presidency. With a view, however, to avoid the abrupt introduction of extensive changes, the Deccan* and Khandeish were not immediately brought under the operation of the then existing Regulations, but the Honorable Mountstuart Elphinstone was appointed Sole Commissioner for those Provinces, under whom a system was adopted, calculated, by its mildness and forbearance, gradually to prepare the way for their introduction. In Guzerat, where the Company's acquisitions had been less rapid, Provincial Courts of Appeal and Circuit Courts were at once established, subject respectively to the Governor in Council, in his double capacity before mentioned, sitting as a Court of Sudder Adawlut in the one instance, and as a Superior Criminal Tribunal in the other.

Shortly after these extensive territorial acquisitions, the inconvenience of having the executive and legislative authority of the State joined with the judicial and administrative, began to be felt; and therefore, early in the year 1819, the attention of the Supreme and Home Governments was drawn to the necessity of separating them. Accordingly, Regulations V. and VII. of 1820 were passed, instituting Supreme Courts, to be styled, respectively, the Sudder Dewanee and Sudder Foujdaree Adawlut, whose province was to superintend the administration of civil and criminal justice within the Zillahs subordinate to the Presidency of Bombay, and to take cognizance of all matters of Police within the same limits.

By Regulation V. of 1820, above mentioned, the Guzerat Provincial Court of Appeal was abolished; therefore, in order to meet the convenience of the public, the seat of the Sudder De-

* Comprising the present Zillahs of Ahmednuggur, Poonah, and Sholapoor.

wanee Adawlut was changed, and transferred from Bombay to Surat. It was in the same Regulation also enacted, that that Court should thenceforth consist of four Judges, distinct from the members of Government, to be denominated, respectively, Chief, Second, Third, and Fourth Judges,* and further, that from their decision an appeal should lie only to the King in Council. Again, by Regulation VII. of 1820 it was enacted, that the powers and functions of the Provincial Court of Circuit and of the Superior Criminal Tribunal should be vested in the Court of Sudder Foujdaree Adawlut; the seat of which Court was also fixed at Surat, and made to consist of the same four Judges, who, in their civil capacities, were the Judges of the Sudder Dewanee Adawlut.

These two enactments came into force and had effect from and after the 1st day of January 1821, and under them the jurisdiction of the above-mentioned Sudder Courts extended over the present Zillahs of Surat, Broach, Kaira, Ahmedabad, and the Northern and Southern Konkuns.

In 1827, the numerous Regulations passed, from time to time, by the Governor in Council, as occasion required, from the year 1799, were consolidated and embodied in a Code, commonly called the Elphinstone Code, which as already stated, for the most part constitutes the Law of this Presidency. It was at that time among other things enacted, that the Deccan and Khandeish should be brought under the operation of the said Code. The Southern Mahratta country, subsequently acquired, was

* All these distinctions between the several Puisne Judges were abolished by order of Government, under date the 26th July 1839, and it was resolved, that all the Judges of the Court below the Chief Judge should thenceforth be styled Puisne Judges, and that those present in Court should take rank according to their rank in the service, except that officiating Judges should rank below all permanent Judges, whatever might be the standing in the service of the officiating Judge.

the only exception made therefrom.* Under these altered circumstances, the Governor in Council thought fit, in virtue of the powers vested in him by Clause 1, Section I. of Regulation II. of 1827, to remove the Courts of Sudder Dewanee and Sudder Foujdaree Adawlut to Bombay, that place being deemed more central.

This change took place on the 1st of November 1828. In order, however, to prevent any public inconvenience arising therefrom as regarded the province of Guzerat, it was enacted, by Regulations VII. and VIII. of 1828, that the Provincial Courts of Appeal and Circuit should be revived, and placed under the superior jurisdiction of the Sudder Courts.

It should here be remarked, that on the removal of the Sudder Courts from Surat to Bombay, a material change was made in the duties and functions of the Chief Judge. Hitherto they had been more important and onerous than those of his colleagues. He took the initiative in all matters, and his minutes usually formed the basis of the Court's Resolutions. He was required to be always present, and to take part in all the discussions and questions that arose. From the 1st day of November 1828, however, these duties devolved on the Senior Puisne Judge of the Court, the Junior Member of Council being appointed† *ex-officio* Chief Judge; though, in order to prevent any unnecessary addition to the extensive duties of his higher office, it was declared, his functions as Chief Judge should be limited to his officiating, when a competent Court for the decision of the suit or other matter under discussion could not otherwise be formed. Subsequently it was declared‡ that any *(a)* Member of Council might be the Chief Judge.

* Vide Regulation VII. of 1830.

† Vide Regulations VII. and VIII. of 1828.

‡ Vide Regulation I. of 1830.

In the year 1830, the Guzerat Provincial Courts of Appeal and Circuit were a second time abolished.* The powers of the former were transferred to the Sudder Dewanee Adawlut, and those of the latter, partly to the Criminal Judges, thenceforth designated Session Judges, and partly to three Judges of the Sudder Foujdaree Adawlut; who, under the denomination of Judicial Commissioners, were, in rotation, to make annual circuits, one in Guzerat and the Konkun, another in the Deccan and Khandeish, and the third in the Southern Mahratta Country:† the absence of each from the seat of the Court being limited to four months in the year.

To recapitulate, we have seen how the whole supervision of the civil and criminal jurisdiction of this Presidency was first vested in the Governor in Council,—then in a sole Commissioner for the Deccan and Khandeish, and in the Provincial Court of Appeal and Circuit Court for Guzerat, subordinate to the Governor in Council,—then in a Court of Sudder Foujdaree and Sudder Dewanee Adawlut, of similar constitution, but not equally extensive jurisdiction, with those as at present constituted;—then, again, in the above Courts, conjointly with the Provincial Court of Appeal and Circuit Court in Guzerat, subordinate to them; until now we find the whole supervision once more vested in the aforesaid Sudder Courts.

These Courts consist of five Judges, viz., a Chief Judge, and four Puisne Judges. The former is a Member of Council. He takes no part in the general proceedings, but is only called in on special occasions, when a competent Court cannot otherwise be formed. The four Puisne Judges are the executive members. Of these one is always absent on his Circuit, as Judicial Commissioner, and the other three are always present at the seat of the Court in Bombay.

* Vide Regulations I. and III. of 1833.

† Vide Regulation III. of 1830, Section IX., modified by Regulation VIII. Section III. of 1833.

THE JUDGES

OF THE

COURT OF

SUDDER FOUJDAREE ADAWLUT

PRESENT DURING THE PERIOD OF THESE REPORTS.

In 1827.

SEAT OF THE COURT AT SURAT.

John Romer, Chief Judge, 19th January 1822.
James Sutherland, Puisne Judge, 19th January 1822.
Edward Ironside, Puisne Judge, 19th January 1822.
George William Anderson, Puisne Judge, 29th June 1827.

In 1828.

John Romer, Chief Judge.
James Sutherland, Puisne Judge.
Edward Ironside, Puisne Judge *(on leave)*.
George William Anderson, Puisne Judge.
John Kentish, Acting Puisne Judge, from 3d July 1828.

1st November 1828.

SEAT OF THE COURT AT BOMBAY.

John Romer, Chief Judge.
Edward Ironside, Senior Puisne Judge *(on leave)*.
George William Anderson, Acting Senior Puisne Judge.
Evan Hamilton Baillie, Puisne Judge, from 6th October 1828.
James Henderson, Acting Puisne Judge, from 1st November 1828.

In 1829.

John Romer, Chief Judge, to 20th October 1829.
William Newnham, Chief Judge, from 20th October 1829.
Edward Ironside, Senior Puisne Judge *(returned from leave on the 10th November* 1829).
George William Anderson, Acting Senior Puisne Judge.
Evan Hamilton Baillie, Puisne Judge.
James Henderson, Acting Puisne Judge.

In 1830.

William Newnham, Chief Judge.
James Sutherland, re-appointed Senior Puisne Judge, 18th March 1830.
Edward Ironside, Puisne Judge.
George William Anderson, Puisne Judge.
Evan Hamilton Baillie, Puisne Judge.

In 1831.

William Newnham, Chief Judge, to 1st March 1831.
James Sutherland, Chief Judge, from 1st March 1831.
Edward Ironside, Puisne Judge.
George William Anderson, Puisne Judge.
Evan Hamilton Baillie, Puisne Judge.
Thomas Barnard, Acting Puisne Judge, from 17th January 1831.

In 1832.

James Sutherland, Chief Judge.
Edward Ironside, Senior Puisne Judge.
Thomas Barnard, Puisne Judge.
George William Anderson, Puisne Judge *(absent)*.
Evan Hamilton Baillie, Puisne Judge.
James Henderson, Acting Puisne Judge, 11th January 1832.

In 1833.

James Sutherland, Chief Judge.
Edward Ironside, Senior Puisne Judge *(on leave)*.
Thomas Barnard, Puisne Judge, to 8th February 1833.
George William Anderson, Puisne Judge, from 8th February 1833.
Evan Hamilton Baillie, Puisne Judge.
James Henderson, Puisne Judge.
David Greenhill, Acting Puisne Judge, from 10th January 1833.

In 1834.

James Sutherland, Chief Judge.
Edward Ironside *(on leave to 9th October* 1834, *when he was appointed a Member of Council)*.
George William Anderson, Puisne Judge.
Evan Hamilton Baillie, Puisne Judge.
James Henderson, Puisne Judge.
David Greenhill, Acting Puisne Judge.

In 1835.

James Sutherland, Chief Judge.
George William Anderson, Senior Puisne Judge *(absent from 6th March* 1835, *as one of the Indian Law Commissioners, at Calcutta)*.
Saville Marriott, Senior Puisne Judge, 24th June 1835.
Evan Hamilton Baillie, Puisne Judge.

James Henderson, Puisne Judge, to 7th March 1835.
John Kentish, Puisne Judge, from 18th March 1835 *(on leave from 28th August* 1835).
David Greenhill, Acting Puisne Judge.
George Lettsom Elliot, Acting Puisne Judge, 1st April 1835, and 31st August 1835.

In 1836.

James Sutherland, Chief Judge, to 1st March 1836.
Edward Ironside, Chief Judge, from 1st March 1836.
Saville Marriott, Senior Puisne Judge.
Evan Hamilton Baillie, Puisne Judge.
John Kentish, Puisne Judge *(on leave).*
George Lettsom Elliot, Acting Puisne Judge.
David Greenhill, Puisne Judge.

In 1837.

Edward Ironside, Chief Judge, to 25th May 1835.
James Farish, Acting Chief Judge, from 25th May 1837.
Saville Marriott, Senior Puisne Judge *(on leave 9th December* 1837).
George Lettsom Elliot, Acting Puisne Judge, to 6th December 1837.
James Bruce Simson, Puisne Judge, from 6th December 1837.
Alexander Bell, Acting Puisne Judge, from 6th December 1837.
John Pyne, Acting Puisne Judge, from 6th December 1837.
David Greenhill, Puisne Judge.

In 1838.

Edward Ironside, Chief Judge, to 14th March 1838.
George William Anderson, Chief Judge, from 14th March 1838.
Saville Marriott, Senior Puisne Judge *(on leave).*
James Bruce Simson, Puisne Judge, died 23d November 1838.
Alexander Bell, Acting Puisne Judge, to 7th May 1838.
George Giberne, Acting Puisne Judge, 7th May 1838.
John Pyne, Acting Puisne Judge.
David Greenhill, Puisne Judge.

In 1839.

George William Anderson, Chief Judge.
Saville Marriott, Senior Puisne Judge *(on leave)*.
Alexander Bell, Acting Puisne Judge, 23d February 1839.
George Giberne, Puisne Judge.
Richard Mills, Acting Puisne Judge, from 16th January to 23d February 1839, appointed temporarily, but never took his seat in the Court.
John Pyne, Acting Puisne Judge.
David Greenhill, Puisne Judge.
Philip William LeGeyt, Acting Puisne Judge, from 2d January to 9th March 1839.

In 1840.

George William Anderson, Chief Judge.
Saville Marriott, Senior Puisne Judge *(returned from leave 16th January* 1840).
Alexander Bell, Acting Puisne Judge.
George Giberne, Puisne Judge.
John Pyne, Acting Puisne Judge, to 14th January 1840.
David Greenhill, Puisne Judge.

In 1841.

George William Anderson, Chief Judge, to 28th April 1841, when he became Governor of Bombay.
John Andrew Dunlop, Officiating Chief Judge, from 28th April 1841.
James Henry Crawford, Officiating Chief Judge, from 27th September 1841.
Saville Marriott, Puisne Judge.
Alexander Bell, Puisne Judge.
George Giberne, Puisne Judge.
David Greenhill, Puisne Judge.

In 1842.

James Henry Crawford, Officiating Chief Judge, to 4th April 1842.

Saville Marriott, Officiating Chief Judge, from 6th April 1842, and Puisne Judge, from 9th June to 13th October 1842.
George William Anderson, Chief Judge, re-appointed 9th June 1842.
Alexander Bell, Puisne Judge.
George Giberne, Puisne Judge.
John Pyne, Puisne Judge, 5th January 1842.
Benjamin Hutt, Acting Puisne Judge, from 6th April to 9th June, and from 6th July 1842, confirmed 20th October 1842.

In 1843.

George William Anderson, Chief Judge.
Alexander Bell, Puisne Judge.
George Giberne, to 27th January 1843.
John Pyne, Puisne Judge *(on leave from 6th September* 1843).
William Simson, Puisne Judge, 27th January 1843.
Benjamin Hutt, Puisne Judge.
Henry Brown, Acting Puisne Judge, 25th October 1843.

In 1844.

George William Anderson, Chief Judge, to 3rd April 1844.
Lestock Robert Reid, Chief Judge, from 3rd April 1844.
Alexander Bell, Puisne Judge.
John Pyne, Puisne Judge *(on leave)*.
William Simson, Puisne Judge.
Benjamin Hutt, Puisne Judge.
Henry Brown, Acting Puisne Judge.

In 1845.

Lestock Robert Reid, Chief Judge.
Alexander Bell, Puisne Judge.
John Pyne, Puisne Judge *(returned from leave 26th September* 1845).
William Simson, Puisne Judge *(on leave 1st March* 1845).
Benjamin Hutt, Puisne Judge.

Philip William LeGeyt, Acting Puisne Judge, 21st June 1845.
Henry Brown, Acting Puisne Judge.

In 1846.

Lestock Robert Reid, Chief Judge, to 6th August 1846, when he became Governor of Bombay.
John Pollard Willoughby, Officiating Chief Judge, from 6th August 1846.
Alexander Bell, Puisne Judge.
John Pyne, Puisne Judge, to 1st May 1845.
William Simson, Puisne Judge *(returned from leave 1st December* 1846).
Benjamin Hutt, Puisne Judge.
Philip William LeGeyt, Acting Puisne Judge, from 27th February, confirmed 1st May 1846.
Gregor Grant, Acting Puisne Judge, from 27th February 1846.
Henry Brown, Acting Puisne Judge, to 27th February 1846.

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TABLE OF ERRATA.

Page 35, line 12 (marginal note), *omit* "and selling"

„ 50, *add to marginal note,* "Vide Act II. of 1849, which abolishes disgrace as a punishment"

„ 64, *ditto ditto,* "and then by Act XIV. of 1844 the convict may be transported for life"

„ 81, *add to foot note,* "Vide Act IV. of 1849, being 'An Act for the Safe Custody of Criminal Lunatics'"

„ 93, line 27, *instead of* "to take cognizance" *read* "to try"

„ 94, line 3 (foot note), *instead of* "to take cognizance" *read* "to try"

„ 101, line 22, *for* "E. Sutherland" *read* "J. Sutherland"

„ 171, *add to marginal note,* "This case illustrates, that Forgery cannot be comprised"

REPORTS OF CASES

DETERMINED

IN THE

COURT OF SUDDER FOUJDAREE ADAWLUT.

OF

BOMBAY.

SUROOP SOOK.

v.

SUNTRAM, URF JERAM BIN SIDGUN.

Charge.—*Robbery.*

1827.
20th September.

The case of SUNTRAM URF JERAM BIN SIDGUN.

The confession of an accomplice is evidence only against himself, and can in no way be made use of against another.

The possession of stolen property by a prisoner at a period four years after a robbery, not presumptive evidence of his having committed the robbery. The prisoner acquitted on these grounds.

The regulation under which a prisoner is sentenced, always to be quoted.

THE prisoner was indicted before the Session Judge of Poonah, on 24th of July 1827, for robbing the house of one Luxoomundass, of jewels and property of the value of Rupees 8,000, on the night of the 27th of November 1823, in company with two others, who had been previously apprehended and sentenced.—Plea not guilty.

The only direct evidence of the prisoner having perpetrated the crime charged against him, was contained in the confession of his accomplice Lutcheram, which confession was corroborated by the circumstance of many of the stolen articles having been found on the prisoner's person, and in his possession, as well as in the possession of others, to whom he had pawned them, and also by the fact proved of his concealing a small gold box, part of the stolen goods, when he saw the Government Peons coming to search his house; but it must be observed, that these articles were found in 1827 nearly four years after the robbery in 1823.

The Session Judge, (J. A. Dunlop,) convicted the prisoner of the charge preferred, and taking into consideration the fact of the prisoner being an old offender, who had only been

1827.

SUNTRAM URF JERAM BIN SIDGUN.

two months at large when this robbery took place, sentenced him to fourteen years imprisonment with labour; subject to the confirmation of the Sudder Foujdaree Adawlut.

By the court (J. Romer, *Chief Judge* and G. W. Anderson. *4th Judge.*)

"The Court after mature deliberation on the whole of the proceedings, finds that the only direct evidence against the prisoner is contained in the confession of his accomplice Lutcheeram. It is however an established maxim that the confession of a prisoner is only evidence against himself, and can in no way be made use of as evidence against another. The prisoner therefore cannot be found guilty of the charge of Robbery, on which he has been tried; for what is otherwise considered as corroborative evidence by the Session Judge, only amounts under its circumstances to evidence of the prisoner being in possession of stolen property, upon which ground a charge of receiving stolen property might indeed be made, if it was considered, that the prisoner knew that the property was of that description.—The Court therefore acquits the prisoner. The Court further observes in the proceedings of the Session Judge in this case, that he has not referred to the Penal Regulation, viz. to Regulation XIV of 1827 in awarding punishment, it is however necessary for the due completion of a trial that he do so."

DAJEE AGURWALLA.

v.

BALLAJEE BIN SUDDOO AWEER.

Charge.—*Robbery.*

1827.
16th November

The case of BALLAJEE BIN SUDDOO AWEER.

The prisoner was charged with robbing his master, the prosecutor, of two bags of money and other property valued at Rupees 873-1-6.—The prisoner pleaded guilty.

The Session Judge of Poona, (J. A. Dunlop,) who tried this case on the 16th of October 1827, on arraigning the prisoner, read over to him his confession made before the Magistrate, which the prisoner confirmed; the Session Judge then proceeded to conduct the trial under Regulation XIII Section XXXIX, taking and recording the evidence afresh direct from the declarants, and upon their testimony, as also upon the prisoner's own confession he found the prisoner Ballajee bin Suddoo guilty of robbery under aggravated circumstances, and sentenced him to ten years imprisonment with labour.

It is unnecessary, on a prisoner pleading *guilty*, and confirming his confession before a Session court, to swear the witnessess again to their former depositions. The Regulations simply requiring the evidence in the case (or such part of it taken before any competent authority as if admitted to be true, would prove the charge) to be read over to him. Regulation XIII Section XXXVII Clause 2 of 1827.

By the Court of Sudder Foujdaree Adawlut, (present John Romer, *Chief Judge*, J. Sutherland, and E. Ironside, *Puisne Judges*.)

"The Court after mature deliberation on the whole of the proceedings, concur's in the conviction of the prisoner, Ballajee bin Suddoo Aweer, and applying the provisions of Regulation XIV of 1827, to the crime of which he has been found guilty, confirms the sentence passed against him. The Court observes in the proceedings of the Session Judge in this case, that on the prisoner pleading guilty and confirming his confession made before the Magistrate, it was not necessary for him by the provision of Clause 2, Section XXXVII Regulation XIII of 1827, to swear the witnesses again to their former depositions."

GOVERNMENT.

v.

AMBA, WOMAN.

Charge,—*Child Murder.*

1827.
7th December

The case of AMBA.

The prisoner convicted of child murder, and sentenced by the Session Judge to imprisonment for fourteen years with labour and disgrace; this sentence annulled by the Sudder Foujdaree Adawlut, on the ground that it was contrary to law to award a punishment for murder not laid down in Clause 4th, Section XXVI of Regulation XIV of 1827, which was positive, and a final sentence of two years solitary imprisonment was passed by the court.

The prisoner was tried for child murder, on the 11th day of November 1827, convicted of that offence, and sentenced by the Session Judge of Poonah (J. A. Dunlop,) to be imprisoned for the term of fourteen years with labour and disgrace.

By the Court of Sudder Foujdaree Adawlut, (J. Romer *Chief Judge*, J. Sutherland, and E. Ironside, *Puisné Judges.*)

"The prisoner Amba is sentenced for the crime of child murder to fourteen years imprisonment with labour and disgrace: Clause I, Section III of Regulation XIV of 1827, provides that certain punishments and no others are authorized to be inflicted for the offences to which they are respectively assigned in the code of Regulations, and Clause 4, Section XXVI of the same Regulation prescribes that the punishment of murder shall be death, transportation, imprisonment for life, or solitary imprisonment with flogging; the sentence of the Session Judge is unauthorized by the Regulations, the Sudder Foujdaree Adawlut therefore annuls it, and by virtue of Clauses I and 2 Section VII, of the same Regulation, and in conformity with the law as above quoted, passes the final sentence, that the prisoner Amba woman do suffer two years solitary imprisonment." *

* The prisoner being a woman was exempt from flogging under Clause 3, Section VIII of Regulation XIV of 1827.

GOVERNMENT.

v.

LOHANOO TAMBOOR, BHEEL, and two others.

Charge,—*Murder.*

1828.

20th March.

The case of LOHANOO TAMBOOR, BHEEL, and two others.

This trial was held at Dhoolia, on the 27th day of December 1827, at a General Jail delivery for the province of Khandiesh, when the prisoners Lohanoo and Oosoo, were charged with the murder of one Sintree Patlin, by beating her to death with sticks, on the 29th of March 1827, corresponding with Chytre Shood 2nd, 1749, and the prisoner Bendia Patel with instigating and abetting the murder.—The prisoners severally pleaded guilty.

It appeared from the evidence in this case, which chiefly consisted in the voluntary confessions of the prisoners, confirmed before the Court of Circuit, that Bendia, a decrepit old man of fifty-five years, being bereaved of all his relations, suspected that their deaths had been occasioned by Sorcery; he therefore applied to several persons supposed to be endowed with the power of discovering witches, and they all fixed on Sintree the deceased as being a Bhootali or witch, and stated that his misfortunes had originated in her being possessed of a devil, he was therefore in the words of his confession, "compelled to order the prisoners Lohanoo and Oosoo to kill Sintree, for by her sorceries she had caused the death of no less than nine members of his family, viz. his wife, three daughters, two sons, two grand children, and one step-son, and thus deprived him so completely of all family ties, that in his old age, he had not a person to bring him a cup of water." Lohanoo and Oosoo confessed that agreeably to the order of Bendia Patell, they took Sintree outside their village, and there in the presence of many persons knocked out her brains with sticks, and then buried her; and several witnesses who were present deposed to seeing the death blows dealt.

The prisoners in this case were convicted of the murder of one Sintree, whom they suspected of practising witchcraft, and were sentenced by the Court of Sessions to be imprisoned for life. The Court of Sudder Foujdaree Adawlut, taking into consideration the gross ignorance, and superstition displayed by the prisoners, and the uncivilized state of the country in which the crime was committed, admitted the belief that sorcery was practised by the deceased, as a palliation of the crime and on this ground recommended the prisoners to the merciful consideration of Government, with a view to a mitigation of the sentences awarded at the requisition of the Law. This recommendation received the sanction of Government, and mitigated sentences were passed.

By the Court of Circuit, (S. Marriott, *Judge.*) "The guilt of the three prisoners, of the crimes respectively charged against them, has been fully and clearly established, as well

1828.

LOHANOO TAMBOOR BHEEL, and others.

by their own acknowledgments as by other evidence. There could hardly be a more complete instance of profound superstition and its distressing consequences than the one which is exhibited in the present case.—The old man Bendia having been bereaved of all his relations, suspected that their deaths had been occasioned by sorcery. To ascertain the correctness of his suspicions, he proceeds to different discoverers of witches, and finding that they all fixed upon the deceased, who was also his relation, he immediately determines to put her to death, and it has been seen that he was but too successful in doing so by means of the other two prisoners, Lohanoo and Oosoo. There can be no doubt that the whole of these three persons were convinced at the time, as also they are still so, that the unfortunate Sintree was a witch, and that she brought the calamities mentioned upon the other prisoner's family. But though the belief of the three prisoners was equal, and on the score of superstition would place the three upon an equality, still there is much less excuse in respect to the murder for Lohanoo and Oosoo than there is for Bendia, whose feelings were naturally excited to the highest pitch of irritation and revenge against the authoress of his misery, as he was convinced Sintree was.—In considering the subject in all its bearings, and in determining the nature and extent of punishment, which it is proper to award in this case, the Court's object must evidently be to impose the utmost possible lenient penalty, consistently with insuring by means of example the safety of individuals from the consequences which the superstition in question is so liable to produce.—It is provided by Law that "*the belief that sorcery was practised by the deceased shall not be admitted as a justifiable cause for putting him or her to death.*" But though such a belief may not be a justifiable cause for killing the supposed sorcerer, the court cannot contemplate passing a sentence of capital punishment, until it has been clearly established by experience, that all less severe ones have failed in securing the community at large, by the operation of the Law, against the consequences of the gross superstition under which so many members of it labour, in repect to a belief in sorcery—contemplating the subject under

Regulation XIV of 1827, Section XXVI. Clause 2nd.

this view the Court passes the following sentence, that you Lohanoo, Oossoo, and Bendia, be each, and all of you, imprisoned for the terms of your natural lives." Regulation XIV of 1827, Section XXVI. Clause 4th.

The judge however in his letter referring the case for the confirmation of the Sudder Foujdaree Adawlut made the following recommendation for mercy.—"In consideration of the gross ignorance and superstition which this case displays, in consideration therewith of the general state of the people, particularly in the wild part inhabited by the prisoners, I would recommend for the favorable consideration of the Sudder Foujdaree Adawlut, that the sentences awarded against the prisoners, Lohanoo and Oosoo, Bheels, be mitigated to a term of fourteen years imprisonment with labor; And in addition to these grounds, in consideration of the decripitude of the third prisoner Bendia, as an act of grace, that his sentence might be reduced to a period of three years imprisonment."

The Court (J. Romer, *Chief Judge*, and J. Sutherland, *2nd Judge*,) concurring in the convictions and sentences passed by the Judge of Circuit, thereupon at the requisition of the Law, as declared by Regulation XIV Section XXVI Clause 2nd & 4th and Section I Clause 5th of 1827, confirmed the said convictions and sentences, viz. that the prisoners Lohanoo, Oosoo, and Bendia, be severally imprisoned for the terms of their natural lives.—Having thus performed what the strict interpretation of the Law required, the court proceeded to take into consideration the recommendation for mercy submitted by the Judge of Circuit, and being of opinion with that functionary, that there were grounds for a mitigation of punishment, resolved, under the provisions of Regulation XIII Section XXXI of 1827, to submit the proceedings in this case to the Honorable the Governor in Council for a mitigation of the sentences awarded, to the extent proposed by the Judge of Circuit. On the 20th of March 1828, it was intimated to the court through the Judicial Secretary to Government, that the Honorable the Governor in Council was pleased, as an act of grace, to grant to the prisoners the mitigations of punishment recommended. Warrants for the mitigated sentences were accordingly issued.

GOVERNMENT.

v.

VENKOO WULLUD HURJEE POWAR.

Charge,—*Murder.*

1828
22nd May.

VENKOO VULLUD HURJEE'S case.

In all cases where prisoners are sentenced to suffer death, it is required by the Regulations and by the practice of all criminal courts, to set forth, and specify the mode in which death is to be inflicted, both in the sentence and in the warrant for carrying the same into execution.

The prisoner was indicted, before a Court of Circuit, at a general jail delivery for the Province of Sholapoor, holden in the city of Sholapoor, on the 25th day of February 1828, for the wilful murder of his mother, on the night of the 25th of March 1827, (corresponding with Falgoon wud 13th Shuke 1748) by striking her two blows on the head with a bludgeon, near the Village of Urzoongee, Talooka Indee, within the Province of Sholapoor.—Plea Guilty.

From the details of the prisoner's confession, and from other evidence this charge was clearly brought home to the prisoner.

The Session Judge on Circuit (J. A. Dunlop) found the prisoner, Venkoo Wullud Hurjee Powar, guilty of the murder of his mother, as laid in the indictment, and entertaining no doubt that the deed was done with premeditation and malice aforethought, he sentenced the prisoner Venkoo Wullud Hurjee Powar to suffer death.

By the Court (J. Romer, *Chief Judge*, and J. Sutherland, *2nd Judge*.) "The Sudder Foujdaree Adawlut concurring in the conviction of the prisoner Venkoo Wullud Hurjee Powar, proceeds to pass the final sentence; but previously to doing so, it is necessary to notice the following circumstance. It appears by the proceedings of the Session Judge before the Court, that he sentenced the prisoner Venkoo Wullud Hurjee Powar to suffer death, the mode in which death is to be inflicted is neither mentioned in the sentence nor in the warrant for carrying it into execution. Regulation XIV A. D. 1827, Section 4 Clause 1, provides that the punishment of death shall be inflicted by hanging the criminal by the neck. Courts of Circuit always include in their sentences and warrants, the order prescribing the manner in which death is to be inflicted; and it does not appear that the Regulations intend that this should be omitted. The final sentence of the Sud-

1828.

VENKOO WULLUD HURJEE'S case.

der Foujdaree Adawlut is, that the prisoner Venkoo Wullud Hurjee Powar, be hanged by the neck until he be dead, upon a gibbet, to be erected on the spot whereon he committed the murder, and to be left there standing."*

GOVERNMENT.

v.

GOVINDA BIN BALLAJE.

Charge.—*Murder.*

and

BHEWREE WIFE OF NANA COLEE,

Charge.—*Concealment before the fact.*

1828.
31st May.

The case of GOVINDA BIN BALLAJEE and another.

This trial came on before the Court of Sessions, held at Ahmednuggur, on 6th of May 1828, when the prisoner Govinda was charged with the wilful murder of Bhicka Moteekuree, and the prisoner Bhewree as an accessary before the fact with instigating.—Plea not guilty.

A the paramour of B, in order to get rid of C the husband of B, resolved with the consent and advice of B to murder C, and for this purpose A about dusk waylays C, but one D happening to pass along the road, A mistakes D for C and kills him.

A is tried for the murder of D and sentenced to death. Held

The confessions made by the prisoners before the Komavisdar immediately after apprehension, formed the principal evidence against them, and these though subsequently retracted before the Magistrate, and the Court of Sessions, were satisfactorily proved to have been voluntarily given. Govinda in his confession stated, that for six months, he had been carrying on an illicit intercourse with the prisoner Bhew-

* This practice by order of the Governor General of India in Council was directed to be discontinued, as being objectionable; vide letter of the Secretary to Government of India dated 2nd December 1834 communicated to all Zillah Judges in the Court's letter of 10th February 1835, since which gibbets are never left standing.

GOVINDA BIN BALLAJEE and another.

by the Sudder Foujdaree Adawlut that this conviction was good in Law.

B the wife of C being charged as an accessary before the fact with instigating the murder of D, was sentenced to be imprisoned for life, held by the Suddur Foujdaree Adawlut that B was not an accessary before the fact to the murder of D, of which she had no foreknowledge, and that the defect not being one of form, the prisoner B must be acquitted.

ree, the wife of Nana Colee, that Nana hearing of this, quarrelled with him, and forbade him his house; that on the 31st of January 1828, he went to Chotia Fukeer's well to draw water, and there met the female prisoner Bhewree; while sitting conversing with her, Nana Colee came up, and said to him, that he, (Nana) "would flay them both and take their skins to the Sircar;" that a dispute ensued, but they finally separated; that about 3 o'clock on the same day he again met Bhewree, who advised him to murder her husband, Nana, he accordingly determined to waylay and murder Nana Colee that same night, and for this purpose taking a spear and a bludgeon he hid himself in the hedge by the road side leading to Nana Colee's house; about 7 P. M. seeing a man coming along whom he took for Nana Coolee, he rushed out, struck him a blow on the back of the neck with his bludgeon, and wounded him twice with his spear; on the man calling out "murder" he discovered it was not Nana Coolee, but some one else, he therefore stole home; shortly afterwards he heard the report that Bhicka Moteekaree was murdered, and the blood being traced to near his house, he was apprehended, and made the above confession. The prisoner Bhewree made a confession in substance to the same effect, and admitted her guilty knowledge of the intention of the prisoner Govinda to murder her husband, Nana Coolee. These confessions received a satisfactory degree of corroboration from the testimony of the witness, Nana Coolee, who proved, that the prisoner Govinda kept up a criminal intercourse with the other prisoner, and that Nana Coolee had quarrelled with Govinda on the subject; and witness further stated that on the 31st January 1828 meeting the two prisoners conversing at Chotia Fuckeer's well, he became much incensed, and said to Govinda, "I will flay both of you and take your skins to the Sircar." A jury, who held an inquest on the body of the deceased, returned a verdict of wilful murder against the prisoner Govinda, in that having mistaken one Bhicka Moteekaree for Nana Colee, whom he was intending to murder, he inflicted several wounds on the aforesaid Bhicka Moteekaree, in consequence of which he died instantaneously.

1828

The case of GOVINDA BIN BALLAJEE and another.

The prisoners in their defence urged that their confessions had been extorted.

"By the Court of Sessions (Saville Marriott, *Session Judge.*)—The confessions of the prisoners are clear and connected, and are supported in a powerful manner by the circumstances which have been recorded, and amongst which is to be found the cause of the murder, namely, the intention of putting Nana Colee the husband of the prisoner Bhewree to death, in consequence of the intrigue between the two prisoners. With regard to the validity of these confessions the Court entertains no doubt, as the plea set up by the prisoners before the assistant Magistrate of the confessions having been obtained by violence, has completely failed, and there has appeared no other fact of an invalidating nature. The Court accordingly finds the prisoner Govinda bin Ballajee, guilty of the murder of Bhicka Moteekuree; and the Court further records the verdict of guilt against Bhewree, wife of Nana Colee, in being accessary before the fact to the said murder, by instigating the prisoner Govinda bin Ballajee to the commission thereof. In passing sentence the Court considers the case to exhibit a series of criminal acts, which indicate great turpitude on the part of both the prisoners at the bar. They first entered into criminal intercourse, continued it for a considerable time, and then resolved to destroy the husband of the female prisoner Bhewree, that they might proceed in their criminal course without interruption. In their endeavour to destroy the husband, the unfortunate man Bhicka Moteekaree fell a victim to their machination. It is true, that it was not their intention to destroy Bhicka Moteekaree, but the law has most wisely provided, if in the attempt to kill one person, another's life should be sacrificed, the perpetrator of the deed is guilty of the crime of murder and consequently becomes liable for its penalties. In the present instance, the Court has fruitlessly endeavoured to discover some ground which would justify its sparing the life of the prisoner Govinda, whereas the injury he had previously inflicted upon the husband, and the premeditation with which the murder, as contemplated against him, was perpetrated, are circumstances of an aggravating na-

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The case of GOVINDA BIN BALLAJEE and another.

ture; as regards the adultery, the prisoner Bhewree is more highly culpable than her fellow convict, and as regards the murder equally so in the eye of the law, but taking however into consideration the custom of the country in respect to not depriving a female of life, the Court resolves to pass the following sentences, liable to the confirmation of the Sudder Foujdaree Adawlut; that you Govinda be taken to the place of execution at the town of Nassick, and there be hung by the neck until you be dead, and that your gallows be left standing; * and that you Bhewree, wife of Nana Colee be imprisoned for the term of your natural life."

Reg. XIV, of 1827, A. D. Sec. XXVI, cl. 4 and Sec. I, cl. 5.

By the Court of Sudder Foujdaree Adawlut (J. Romer, *Chief Judge*, and J. Sutherland, *2nd Judge*,) "The Court after mature deliberation concurs in the conviction and sentence of the prisoner Govinda bin Ballajee, but the Court does not concur in the conviction of the second prisoner Bhewree wife of Nana Colee. The first prisoner Govinda bin Ballajee is charged with having murdered Bhicka Moteekaree, while lying in wait to murder Nana Colee.—The prisoner Bhewree is charged with being accessary before the fact to the above murder; and her conviction runs in the following terms. "The Court further records the verdict of guilt against Bhewree wife of Nana Colee, in being accessary, before the fact to the said murder, by instigating the prisoner Govinda bin Ballajee to the commission thereof." But Bhewree was accessary before the fact and instigating to the intended murder not of Bhicka Moteekaree, but of her husband Nana Colee. The first prisoner under the Regulations is correctly charged with the crime of murder, and had Bhewree instead of being arraigned and convicted as accessary before the fact to the murder of Bhicka Moteekaree, been charged with being accessary before the fact to the intended murder of her husband, Nana Colee, in prosecution of which design Bhicka Moteekaree was unlawfully deprived of life, the charge would have been supported by evidence, and she might have been

* This practice is now forbidden, vide Court's letter 10th of February 1835, communicating instruction from the Governor General of India in Council.

1828

The case of GOVINDA BIN BALLAJEE and another.

The prisoner acquitted of being an accessary to the murder of her own husband, on the grounds of a defect, not in the form, but in the substantial part of the charge.

duly convicted of instigating murder; as it is, the record of the trial before the Session Judge shows the prisoner Bhewree to be charged with an offence which is not proved by the evidence produced against her. On these grounds, the Sudder Foujdaree Adawlut is unable to concur in the conviction of the second prisoner, from the insufficiency and defect of the proceedings held on her trial as above noticed, and as the deficiency is not in the form, but in the substantial parts of the proceedings, justice requires that the prisoner should be acquitted, a resolution the Court is constrained to adopt, although an abandoned criminal will hereby escape punishment."

BHIMEE MAHARIN.

v.

HUSSHA WULLUD YESHNACK,

Charge,—*Rape.*

1828
31st May.

HUSSHA WULLUD YESHNACK'S case.

The prisoner, on being arraigned on a charge of having ravished and carnally known and abused an infant of nine years of age, set up a defence that the child consented to his committing the act: whereupon it was held by the Sudder Foujdaree Adawlut, that the consent of a child of such tender years was immaterial, and the prisoner on the evidence adduced was sentenced to be imprisoned and kept to hard labor for the term of fourteen years and to be twice flogged.

The prisoner was arraigned at the bar of the Session Court of Ahmednuggur, on the 22nd day of April 1828, on a charge of having ravished, and carnally known, and abused, one Bhimee, a girl under ten years of age.—Plea, not guilty.

It appeared that the child was nine years of age, and from her evidence, that on or about the 20th of February 1828, corresponding with Falgoon Shood 5th 1746, she was proceeding to her father's field, and when about a mile from her village, Kanzoonay Karè, she met the prisoner, who seized her and forcibly carried her into a nullah, stuffed a cloth into her mouth, and then and there effected his unlawful purpose with force and violence; that the prisoner on the completion of the act ran away, when she went direct to her father, whom she found in his field, and communicated to him how she had been abused by the prisoner. This evidence was corroborated by Honia the father of Bhimee, and Radhia a near rela-

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HUSSHA WULLUD YESHNACK'S case.

tion, both of whom deposed that the child came to the field where they were working, and complained that the prisoner had forcibly abused her. There was also ample evidence that her person had been injured.

The prisoner in his defence stated, that he met Bhimee about a mile from her village, that they had some conversation, and he asked her to yield to his passion, and that on promising her three annas, she consented,* but that he never forced her.

The Session Judge (Saville Marriott) thus recorded his finding. "There is no reason to question the testimony given by the girl Bhimee, her father, or her relation; on the contrary, their evidence has been given in so clear a manner, as greatly to carry the appearance of truth. The prisoner too admitted, that he had carnal knowledge of the child, but that it was with her own consent. It is however impossible for the Court to credit that such a child could have acquiesced in such an invitation, and the Court pronounces the prisoner at the bar guilty of the crime of Rape charged against him;—and after maturely considering all the circumstances of the case, in which nothing of a palliative nature is to be discovered, the Court deems this a fit subject in which to mark by example the just consequence of so cruel and abominable an act, as that of which the prisoner has been found guilty. † The Court

* By the law of England it is felony to carnally know a girl under the age of ten years, and a misdemeanor to carnally know a girl above the age of ten and under the age of twelve years, and in either case, it is immaterial whether the offence was done with or without the consent of the female. But in India where females come to maturity so early, this doctrine must be received with considerable caution, and must always be a point to be determined by the discretion of the Court, or by a Jury. And such was the importance attached to this point by the legislature, that by the 9 of Geo. IV. Chapter 74, (which is an Act for improving the administration of criminal justice within the jurisdiction of Her Majesty's Supreme Courts of Judicature in the East Indies) it was enacted in consideration of the early age at which females in India arrive at maturity, that it shall be felony in any person to carnally know a girl under the age of *eight* years, and a misdemeanor if the girl be above *eight* and under *ten* years of age.

† It may not be here out of place to insert some very pertinent remarks, from the pen of a very high and learned legal authority, upon the evidence necessary to support an indictment for Rape.—"The person ravished may give evidence

1828

HUSSHA WULLUD YESHNACK'S case.

therefore in virtue of the powers vested in it, pronounces under the provision of Regulation XIV, Section 29, Clause I, of 1827, that you Hussha Wullud Yeshnaek, Mahar, be imprisoned and kept to hard labor for the term of fourteen years, and that you be twice flogged. The first time in the village of Kanzoonay Kare, and the second in the town of Ahmednuggur, receiving at each flogging, five and twenty stripes. The sentence subject to the final orders of the superior court."

The Court of Sudder Foujdaree Adawlut (J. Romer, *Chief Judge*, and J. Sutherland, *2nd Judge*) after mature deliberation on the whole of the proceedings held in this case, fully concurred in the conviction of the prisoner, and applying the provisions of Regulation XIV of 1827, to the crime of which he had been found guilty, confirmed the sentence.

upon oath, and is in law a competent witness; but the credibility of her testimony, and how far forth she is to be believed, must be left to the jury, and it is more or less credible according to the circumstances of fact that occur in that testimony. If the witness be of good fame, if she presently discover the offence, made pursuit after the offender, shewed circumstances and signs of the injury, whereof many are of that nature, if the place wherein the fact was done was remote from people, inhabitants, or passengers, if the offender fled for it; these and the like are concurring evidences to give greater probability to her testimony, when proved by others as well as herself. But on the other hand, if she conceal the injury for any considerable time after she had opportunity to complain, if the place where the fact was supposed to have been committed was near to inhabitants or common recourse or passage of passengers, and she made no outcry, when the fact was supposed to have been done, when and where it is probable she might be heard by others, these and the like circumstances carry a strong presumption that her testimony is false or feigned.—It is true Rape is a most detestable crime, and therefore ought to be severely and impartially punished, but it must be remembered, that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent."—Lord Hale's Pleas of the Crown. Volume I. Page 633.

SHAHJEE WULLUD ALI KHAN,

v.

JOHRA KOME BABNYA.

Charge,—*Murder.*

1828
11th July.

JOHRA KOME BABNYA'S case.

If a prisoner before a Court of Session, plead, *not guilty*, it is irregular to cause the depositions made by witnesses before a Magistrate, to be recorded as evidence against the prisoner, on the declarants being resworn and confirming the same before that Court. The proper course of procedure being to take and record every oral declaration de novo, direct from the declarant.

On the 27th day of November 1827, this prisoner was arraigned before the Session Court of Poonah, and indicted for poisoning her own husband, on the 15th day of August 1827. Plea, not guilty.

On the trial the witnesses for the prosecution were merely sworn to the truth of the depositions made by them before the committing magistrate, from which it appeared, that the prisoner had confessed before the Komavisdar of Pabhul, when she was first apprehended, that being desirous of living with a paramour, she had destroyed her husband by putting poison into his kitcheree, of which he partook and died the same evening, from the effects of the poison. It further appeared from the depositions of the witnesses to the confession, that it was given voluntarily, but from the depositions of others, that it had been obtained by the prisoner's relations having intimidated and even beat her. The prisoner on her examination before the Magistrate denied the charge, and insisted that the confession had been extorted by force. On her defence before the Session Court she adhered to her former denial, and added that Shahjee her deceased husband's brother had trumped up a false accusation against her, for refusing to yield to his incestuous solicitations.

The Session Judge (J. A. Dunlop) considered the several accounts given by the prisoner so much at variance with each other, that she was deprived of the advantage she might otherwise have been entitled to claim from a consistent denial, and being of opinion, that her confession, which had been amply attested, contained the true account of her husband's death, he sentenced her to suffer two years' solitary imprisonment, subject to the confirmation of the Superior Court.

Regulation XIV. Section 26, Clause 4, of 1827.

On the case coming before the Sudder Foujdaree Adawlut, Mr. J. Romer, *Chief Judge*, recorded the following minute.

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JOHRA KOMR BABNYA'S case.

"The prisoner Johra having pleaded, "not guilty," and continued to deny her confession, said to have been voluntarily made before the district police authorities, it was not competent for the Session Judge under the restrictions of Regulation XIII, Section XXXIX of 1827, to cause the evidence taken before the Magistrate in proof of the prisoner's confession, to be recorded against her, on the declarants being resworn, and confirming on the trial the depositions made by them before the Magistrate, neither is the evidence of the witness, Shahjee, taken and recorded in the same way, admissable. Both he and the witnesses to the confession should have been examined *viva voce* before the Session Judge trying the prisoner, on every point to which they could depose, and their depositions taken anew, together with whatever cross examination the prisoner might think fit to put them to. There is another defect in this trial, it does not appear on any part of the proceedings, except in the retracted confession of the prisoner, that her late husband actually died from the effects of poison. Whether any inquest was held on the body, and what appearance it had after death, is not any where mentioned; the death may have been sudden, but still not caused by poison; it is, I hold therefore, absolutely necessary that further inquiry should be made on these points. The age of the prisoner should also be stated, it is omitted on arraigning her, and does not appear in the confession."

It is the practice of the Suddur Foujdaree Adawlut to return a case to the Zilla Court for further evidence when such course is deemed necessary.

Mr. J. Sutherland, *2nd Judge*, concurring in the above remarks, it was resolved to adopt them as the resolution of the Court, and to forward them to the Session Judge under the usual precept, requiring his attention to their exigency and tenor.

The Session Judge in execution of the above precept, submitted to the Court a supplementary record of his proceedings, wherein he noticed, that the fact of there being no Inquest, arose from the deceased's death, which took place on the 15th of August 1827, being supposed to have been a natural death, until the prisoner confessed on the 17th, before which latter date the body had been buried.

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JOHRA KOME BABNYA'S case.

Whereupon the Judges of Sudder Foujdaree Adawlut on resuming consideration of this case, recorded the following opinions.

Mr. Sutherland, *2nd Judge*, "Although the additional evidence goes to prove that the confession of the prisoner was actually made by her, there is no new evidence whatever adduced to shew, that the prisoner's husband actually died from the effects of poison, this being the case, matters stand as they did when the trial was last before the Court, and being involved in much doubt from the want of evidence, that ought to have been readily procured at the time, I am of opinion, the conviction and sentence should be reversed."

Mr. Anderson, *4th Judge*, "I hold that the confession of the prisoner is proved, and therefore that the sentence ought to be confirmed. There are some defects in the trial, but the ends of justice ought not to be defeated where guilt is clear."

Mr. Kentish, *3rd Judge*, "The prisoner is convicted of the crime of murder, and sentenced to two years solitary imprisonment. What the extenuating circumstances were, do not appear; doubts, in the mind of the Court as to the guilt or innocence of a prisoner, ought not to be admitted as grounds for leniency of punishment, but should be received and taken as arguments in favor of acquittal. Were the offence clearly proved, no reason presents itself for not awarding the utmost severity of the Law, but few, on the nature of the evidence recorded, would, I conclude, be prepared to sustain the conviction, had the prisoner been sentenced to suffer death. I am of opinion, that it is not proved that the deceased died from the effects of poison, and that the sentence should be reversed."

Upon the majority of voices, the Court annulled the conviction and sentence, and ordered the prisoner to be released.

GOVERNMENT.

v.

BAPPOOJEE LUXUMUN SONEE.

Charge,—*Forgery.*

1828
30th July.

BAPPOOJEE LUXUMON SONEE'S case.

It is irregular for Judicial or Magisterial authorities, to connect themselves in any way with informers, especially in cases, which may come under their own cognizance, although the motives are the detection of crime, and a desire to further the ends of public justice. In a case of Forgery discovered by such means, the practice was condemned by the Sudder Foujdaree Adawlut as highly objectionable.

At a Sessions held at Rutnagiree, on the 1st day of April 1828, the prisoner was charged with forging and fabricating a sunnud, purporting to have been passed under the Peishwa's authority by Ramchunder Mahadeo, His Highness' Soobedar for the Talook of Viziadroog, bestowing upon one Nursoo Pardé, bin Kessoo Pardé, 200 Larries (*i. e.* 50 Rupees worth) of Enam land in the village of Bhoo.—Plea not guilty.

The prisoner was brought to the notice of the Magistrate by Mahomed Ebrahim Purkar, the Dufterdar or Record keeper of Rutnagiree, as a person who was in the constant habit of forging public documents. Whereupon the Magistrate, in concert with his Dufterdar induced one Gunesh Appajee by the hope of reward, to undertake the detection of the prisoner and to bring him to justice. For this purpose Rupees one hundred were placed at the disposal of Gunesh Appajee, a sheet of paper with a private mark on it, made by the Magistrate, was given to him and also a draft sunnud, agreeably to which form the contemplated forged one was to be drawn out, in the name of Nursoo Pardé bin Kessoo Pardé, a person who had never been possessed of *any* Enam land. This snare proved successful, the prisoner was apprehended, and on being brought before the Magistrate was committed by him to the Sessions on the present charge.

On the prisoner's trial before the Court of Sessions, Gunesh Appajee deposed, that in Kartic 1749, corresponding with November 1827, he was induced by the promise of reward to detect the prisoner, who was in the habit of forging sunnuds, kowls, &c. that deponent took Hurree Trimbuck and Eshwunt Mahadeo with him, and went to the prisoner, who consented to forge a sunnud, in the name of Nursoo Pardé bin Kessoo Pardé, on receiving Rupees seventy-five, that deponent gave

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BAPPOOJEE LUXUMON SONEE'S case.

the prisoner a piece of paper to write the sunnud upon, and some few days afterwards the prisoner brought to deponent the sunnud written and sealed, whereupon deponent paid him the Rupees seventy five and reported the circumstance to the Dufterdar. Trimbuck and Eshwunt corroborated this evidence. The Dufterdar swore, that the paper on which the sunnud had been written, was the same he furnished to Gunesh Appajee, but stated, that the mark made by the Magistrate had been erased: and Nursoo Pardé, bin Kessoo Pardé declared, that he had never received a sunnud from the Peishwa bestowing upon him any Enam lands in the village of Bhoo; that he had never seen the instrument shewn to him in Court, nor did he know any thing about the land. Such was the case for the prosecution.

The prisoner in his defence stated, that during the Peishwa's Government, while he was in the service of Ramchunder Mahadeo, His Highness' Soobedar for the Talook of Viziadroog, he wrote the said sunnud on the date therein specified, but denied having forged it during the Company's Government, and called four witnesses to support his defence, who upon being examined in Court denied all knowledge of the sunnud in question.

Regulation XIV of 1827, Clause 3rd Section XVII.

The Session Judge (G. L. Elliot) taking into consideration the frequent commission of this offence, and the fact, that two charges of this nature had been clearly brought home to the prisoner, sentenced him, the said Bappoojee Luxumon, to be publicly disgraced by being led round the town of Rutnagiree on a jackass, with the fabricated document attached to his back, and with a paper explanatory of his crime, and further to suffer five years imprisonment with labour, subject to the final decision of the Sudder Foujdaree Adawlut.

By the Court (J. Sutherland, *Acting Chief Judge*, G. W. Anderson, *Acting 2nd Judge*, and J. Kentish, *Acting 3rd Judge*.) "The Court after mature deliberation on the whole of the proceedings in the case, concurs in the conviction of the prisoner; but at the same time the Sudder Foujdaree Adawlut is of opinion, that the practice of judicial authorities in any way connecting themselves with informers, especially in those

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BAPPOOJEE LUXUMON SONEE'S case.

cases which may come under their own cognizance, is highly objectionable, although the motives, as in the present instance, were solely the detection of crime, and emanating from a desire to further the ends of public justice. On considering the sentence awarded, the Court determines to remit the public disgrace, but to confirm the sentence of five years imprisonment with labour."

NURROTUMPOOREE BYRAGEE.

v.

NARRON NUTHOO, RAJPOOT.

Charge,—*Jhansa.*

1828
24th September.

NARRON NUTHOO'S case.

A prisoner tried and convicted in five separate instances of having committed the crime of Jhansa, was punished with five years imprisonment with labour.

The trial of this prisoner, on five separate charge of Jhansa, came on before the Session Court of Kaira, on the 15th day of August 1829.

The case was in substance as follows.—In the year 1828, the prisoner quarrelled with the prosecutor, in consequence of the prosecutor telling his wife, that he, (prisoner) was an illegitimate son; the stigma thus cast on his character was so great in the eyes of his wife, who was also a Rajpoot, as to induce her to forsake him and commit suicide. The prisoner therefore, to revenge this injury, "abandoned his home for hostile purposes," against the prosecutor, as understood by the term Baharwattaee. It was shewn in evidence, that the prisoner on leaving his village uttered threats of revenge against the prosecutor; that shortly afterwards various acts of depredation and destruction of property were committed on persons residing in and about the prosecutor's village, and that on the commission of each of these acts, a Jhansa letter in the name of the prosecutor was found placarded near the spot, to the following effect. "Nurrotumpooree come and redress the injury you have done me, or I vow, I will plunder, burn, and murder, in your name, and the guilt shall be upon your head."

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NARRON NUTHOO'S case.

The prisoner in the first indictment was charged with burning a quantity of grass, valued at Rupees sixteen, belonging to one Lucka, and with sticking up a Jhansa letter against an adjoining barn.—The second charged him with destroying a field of Tobacco.—The third with burning some Juwaree.—The fourth with destroying some cotton trees.—And the fifth with stealing two buffaloes and two calves. All these offences were perpetrated during the night, and in each instance a Jhansa letter was placarded near the spot to inform the owner that Nurrotumpooree was the author of the calamity that had befallen him. On the commission of the last offence, pursuit was given and the buffaloes and calves were found in the possession of the prisoner, who was driving them along the road; on his apprehension he admitted his guilt in the five instances, as set forth above. The prisoner also pleaded guilty on his trial, urging, that revenge, and not plunder was his object.

By the Zilla Court.—The Criminal Judge (A. Bell) having found the prisoner guilty on the five separate charges on which he has been arraigned, resolved, in consideration of the necessity that existed of endeavouring by a severe example to suppress the crime of which the prisoner had been convicted, and which of late years had been greatly on the increase within the Kaira Zillah, to award the extreme penalty the law in such cases authorized. The prisoner Narron Nuthoo was accordingly sentenced to be imprisoned and kept to hard labour for the term of five years, subject to the confirmation of the Superior Court.

Regulation XIV of 1827, Section XXXV.

The Court (J. Sutherland, and J. Kentish,) fully concurring in the conviction of the prisoner, confirmed the sentence passed by the Criminal Judge of Kaira on him, and issued a warrant for its execution.

GOVERNMENT.

v.

OOMER WULLUD AUWAD,

Charge,—*Murder.*

1829
29th January.

OOMER WULLUD AUWAD'S case.

The prisoner was charged with murder, and convicted before the Criminal Judge, but it appearing that at the time of the commission of the offence, the prisoner was insane, sentence was stayed, and a reference made to the superior Court for instructions.

Held by the Sudder Foujdaree Adawlut, that this procedure was erroneous, as the prisoner was entitled to an acquittal on the ground of the proof of insanity. The Court accordingly acquitted the prisoner, but directed his detention until the Civil Surgeon should certify that he had become sane.

The prisoner was arraigned before the Session Court of Poonah, on the 8th of January 1829, on a charge of wilful murder.—Plea not guilty.

The facts of this case were succinctly these.—The prisoner and eight other Arabs were travelling from Bombay to Poonah, and on the evening of the 8th of December 1828, they reached the village of Karli, where they bivouaced; about midnight the party was disturbed by the violence of the prisoner, who in a paroxysm of insanity, without the slightest provocation, seized a sword, killed two men, and wounded three others. The insanity of the prisoner was clearly established.

The Session Judge (J. A. Dunlop) on the evidence adduced, convicted the prisoner of the charge preferred, but it appearing from the evidence, that at the time of the commission of the murder, the prisoner was labouring under a fit of insanity, with which he was proved to be afflicted, the Session Judge previously to passing sentence referred his proceedings to the Sudder Foujdaree Adawlut for instructions.

By the Court (J. Romer, *Chief Judge*, G. W. Anderson, *Acting Senior Puisne Judge*, and J. Hendersen, *Acting Puisne Judge*,) "The Sudder Foujdaree Adawlut is of opinion that the prisoner ought not to have been convicted of murder, but to have been acquitted on the ground of the proof of insanity at the time. The court further directs, that the prisoner Oomer Wullud Auwad, be delivered over and confined in the Civil Hospital till such time as that in the opinion of the Civil Surgeon, he can be set at liberty with safety to the public."

BHOOPUTTEE WULLUD BUSLINGAPA,

v.

HOOSEENEE, AND NUNDAWA.

Charge,—*Murder.*

1829
29th January.

The case of HOOSEENEE and another.

Held by the Sudder Foujdaree Adawlut that it is irregular and highly objectionable in a Session Judge to interrogate a prisoner on his defence, at his trial, with a view to conviction.

In this case the prisoner Hooseenee was indicted, before the Session Judge of Poonah, on the 20th day of June 1828, for the wilful murder of one Moodbusappa, and the prisoner Nundawa for being accessary before the fact to the crime. The prisoners severally pleaded, not guilty.

The confessions of the prisoners given shortly after apprehension before the Mamlutdar, and confirmed subsequently before the Magistrate, formed the principal evidence against them. Hooseenee in his confession admitted, that he had had criminal intercourse with the female prisoner Nundawa, that by her counsel he had determined to murder her husband, Moodbusappa; that on the night of the 16th of March 1828, he entered Moodbusappa's house, armed with a dagger, to carry his determination into effect; that on approaching the bed, on which Moodbusappa and his wife, the female prisoner, were both lying, Moodbusappa awoke and rushed towards him, whereon he despatched Moodbusappa with one thrust of his dagger; that after the murder, Nundawa took off her ornaments, while he stripped the body of a few others, and these they buried, to create an impression that the house had been robbed, and the deceased murdered for the sake of these ornaments. Nundawa in her confession admitted her guilty knowledge of the other prisoner's intention to commit the murder, and confirmed the account of its commission given by Hooseenee.—In corroboration of the above confessions it was satisfactorily proved, that on the following morning Nundawa gave out, that her house had been robbed of ornaments, and her husband killed by the robbers; that after her confession, Nundawa pointed out a spot, where these ornaments were found buried; that the prisoner Hooseenee had been heard to utter violent threats towards the deceased; and that he had endeavoured shortly before the commission of the crime to induce one Lingappa to assist him.

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The case of HOOSEENEE and another.

On the trial, Hooseenee in his defence denied the truth of his former confession, and stated in exculpation, that being on intimate terms with Nundawa, and believing the deceased had gone to a yatra on the night in question, he went to her house to sleep with her, that the deceased unexpectedly returned home, and finding him with Nundawa, beat him severely with a stick, and tried to throttle him, so that in self-defence, he was compelled to draw his dagger and stab the deceased. The female prisoner Nundawa also retracted her confession made before the Magistrate, and declared, that she knew nothing of the murder, and never planned it, that the other prisoner never came to sleep with her on the night of the quarrel, when her husband was murdered, but that on hearing of the murder she immediately gave an alarm. After the prisoners had concluded their defence, the Session Judge put several questions to the prisoner Nundawa, requiring her to reconcile and explain the different and contradictory accounts given by her of the murder, which led to further contradiction.

Reg. XIV. Sec. 26. cl 4. and Sec. 1. cl. 5 of 1827.

The Session Judge (J. A. Dunlop,) found the prisoners severally guilty of the offences laid to their charge, and sentenced the prisoner Hooseenee to suffer death, and the prisoner Nundawa to be imprisoned, solitarily, for the period of one year, subject to the final orders of the superior Court.

The principal convicted of murder, and sentenced to death; the accessary to one year of solitary imprisonment.

"The Court of Sudder Foujdaree Adawlut (present J. Romer, *Chief Judge*, G. W. Anderson, *Officiating Senior Puisne Judge*, and J. Henderson, *Acting Puisne Judge*,) after mature deliberation on the whole of the proceedings, concurs in the conviction of the prisoners, and applying the provisions of Regulation XIV of 1827 to the crimes of which they have been found guilty, confirms the sentences passed against them. The Court however finds on the record, that the prisoner Nundawa was subjected to a species of cross-examination by the Session Court, not practised or recognized by the conduct of our trials, and a procedure which is decidedly contrary to the principles and spirit in which justice is administered by British Judges, and hereby condemns the practice."

JETA RUTNA.

v.

NAGOJEE GAODJEE.

Charge,—*Murder.*

1829
2nd February.

NAGOJEE GAODJEE'S case.

In this case the Sudder Foujdaree Adawlut thought the finding of the Judge on Circuit should have been Culpable Homicide instead of Murder. On a doubt arising whether the Court had power to alter such finding it was declared, that the Sudder Foujdaree Adawlut had the power to alter such finding, when the offence brought in, being of the same nature, was of a less degree than that set out in the original charge.

The prisoner was arraigned on a charge of murder, before the Provincial Court of Circuit for Guzerat, holding a Session at Ahmedabad, on the 2nd day of December 1828.

It appeared from the proceedings held in this trial, that five youths by name Kasee, Jeta, Bhema, Jeejee, and Gopalljee, on the 15th August 1828, corresponding with 4th of Shrawun Shood Sumvut 1884, took a large herd of cattle, they were tending, across the river Oka, the boundary of their village, into the lands of the village of Lola to graze. The prisoner and four other men seeing them trespassing, ran to drive them away, whereuppn the five youths took to their heels, and endeavoured to recross the river; but Nagojee, the prisoner, being fleeter than the rest of his party, overtook Kasee on the bank of the river, and there struck him two blows with a thick stick, one on the right arm and the other on the back of the neck, which last blow was the cause of death. On the trial, Jeta, Bheema, Jeejee, and Gopalljee, positively deposed to seeing the prisoner inflict the blows, and that Kasee on receiving the second, fell dead into the river. The body of the deceased was found the same afternoon in the river, and on examination two bruises were discovered, the one on the right arm, and the other on the back of the neck.

Nagojee on being called on for his defence, stoutly denied having struck the boy, Kasee, and urged that in re-crossing the river the deceased fell in and was drowned; and appealed to his fellow villagers, who were with him at the time, to confirm the truth of his statement. These villagers deposed, that the prisoner was somewhat in advance of them, that they saw no blows given by the prisoner, and that they believed the deceased's death was caused by drowning, in attempting to recross the river Oka, which was deep.

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NAGOJEE GAODJEE'S case.

The Court of Circuit (J. A. Taylor) considering the charge fully established against the prisoner Nagojee, sentenced him to be transported for the term of his natural life, subject to the final orders of the Sudder Foujdaree Adawlut.

The Court of Sudder Foujdaree Adawlut (G. W. Anderson, and J. Henderson) held, that no malice afore-thought had been shewn, the prisoner having no intention of putting the deceased to death; under this view the Court was agreed, that the prisoner should have been found guilty of the inferior offence of Culpable Homicide and not of Murder, and that under these circumstances the sentence awarded was too severe. Here arose a doubt as to the power of the Sudder Foujdaree Adawlut to alter the finding of a Judge on Circuit, under Clause 2, Section 27 of Regulation XIII of 1827.—The Court inclined to the opinion, that under this Regulation the Sudder Foujdaree Adawlut had the power, but agreeably to Clause 2, Section 7 of Regulation I of 1827, the question was submitted for the interpretation of Government, whereupon the following reply from the Secretary in the Judicial Department was received.

To John Romer Esquire & Judges of the Court of the Sudder Foujdaree Adawlut.

Gentlemen,

I am directed to acknowledge the receipt of your Registrar's letter of the 7th instant, relative to the powers of your Court to alter the finding of a Judge on Circuit, and to acquaint you, that the power given to the Court by the enactment quoted is very comprehensive, and in the opinion of the Governor in Council, fully extends to the view taken of it in your Registrar's letter.

Regulation XIII clause 2, Section 27, of 1827.

(Signed) C. NORRIS,
Secretary to Government.

Bombay Castle,
15th January 1829.

Under the authority of this Interpretation, the Court on resuming consideration of this case, resolved to alter the finding of the Judge on Circuit from Murder to Culpable Homicide, and passed a final sentence that the prisoner Nagojee Goadjee be imprisoned for a term of seven years.

Regulation XIV Section 27 of 1827.

THE INHABITANTS OF OOJUT.

v.

PURTHUM HURYA, AND THREE OTHERS.

Charge,—*Gang Robbery with Murder.*

1829
20th February.

The case of PURTHUM HURYA, and three others.

It appeared that one of the prisoners in this case had been induced by persons wholly unauthorized, to confess to the crime of gang robbery with murder, under promises of pardon. Held by the Sudder Foujdaree Adawlut that a confession so taken could not be received as evidence against the prisoner, and in the absence of other proof, acquitted him.

This case came on before the Guzerat Provincial Court of Circuit at the first Sessions for the year 1829, holden for the Zillah of Surat, when the prisoners, Purthum, Degum, Nathwa, and Bugla, were arraigned on a charge of Gang Robbery with murder and other violence, in having on the night of the 16th of November 1828, (corresponding with Kartick Shood Sumvut 1885) in company with eighteen other armed robbers, plundered the village of Oojut in the Purgunnah Soopa, Zillah Surat, of property of the estimated value of Rs. 2,781-3-0; in having murdered one Muckun Nuthoo; and in having wounded two other persons with arrows discharged by the gang.—The prisoners severally pleaded guilty.

The Court of Circuit (W. J. Lumsden) found the prisoners on their own free and detailed confessions, confirmed before the Court of Circuit, guilty of the charge as laid in the indictment, and sentenced them severally to be hung by the neck until dead. The Circuit Judge however in referring his proceedings for confirmation to the superior Court, deemed it due to the principles of natural justice, and good faith to submit to the Judges of the Sudder Foujdaree Adawlut a strong recommendation to mercy, on behalf of the prisoner Purthum Hurya, on the grounds that it had been proved by the deposition of the witness Mehmoodjee Adumjee, that the Patells of Wurethee, with a view to raise their own character as police agents, held out to the prisoner Purthum Hurya hopes of procuring him impunity, on his giving information of the gang and their places of location, and that acting on the information so obtained, the said Patells apprehended the other prisoners.

By the Sudder Court (G. W. Anderson, *Officiating Senior Puisne Judge* and J. Henderson, *Acting Puisne Judge.)*

"The Court concurs in the convictions and confirms the

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The case of PURTHUM HURYA and three others.

sentences passed on the prisoners, Degum, Nuthwa and Bugla, but in respect to the prisoner Purthum Hurya, the Court is of opinion, that promise and encouragement was held out to him, under which he confessed and gave information, by which the other offenders were apprehended. The persons holding out these promises and giving the encouragement were persons invested with police authority, though without any authority to hold out promise of pardon to any offender. It is not however that this is here to be precisely weighed, but the degree of effect it had upon the mind of the prisoner in inducing him to confess and make disclosures in and under the understanding that he was doing so with benefit and security to himself. The Court is of opinion, that the prisoner acted under the impression that he was so securing himself, that he gave his information in that spirit, and though the authorities quite overstepped their powers, yet that was a circumstance which a man like the prisoner was not likely to think of or comprehend; what however he gave in good faith, in that we must receive it, and in this way give him the full benefit of the impression under which he made his confession, however erroneous that might be in respect of the nature and extent of the authority of the persons holding out to him hope and promise of safety. Finding then that the confession was made under an understanding of a promise by persons in authority that pardon would be extended, the Court holds that the confession so taken cannot be evidence against a person, and their being no other evidence whatever against the prisoner, Purthum Hurya, he must be acquitted. Accordingly the Court acquits the prisoner Purthum Hurya."*

* This and the following case induced the Court to issue the Circular Order No. 24, of the printed collection, which runs thus.

To

The Magistrates,

SIR,

It appearing in two cases that have lately been referred to the Sudder Foujdaree Adawlut, that encouragement and promise of pardon was made to some offenders by Patells and inferior Police Agents, thereby inducing the offenders to confess and give information, I am directed by the Sudder Foujdaree Adawlut to inform you that this practice is without authority and very objectionable,

RAGOONATH WASUN,

v.

MOTA BHAOSING.

1829
20th February.

MOTA BHAOSING'S case.

In this case, the prisoner was induced to give information against a gang of robbers, of which he was a member, under hopes and promises of pardon and reward, held out to him by the Patells of a village, which had been lately plundered by the gang. This course received the countenance of the Koomavisdar, and of the Magistrate. It was ruled by the Sudder Foujdaree Adawlut, that any subsequent confession made by the prisoner in consequence of such hopes and promises, was inadmissable, and that the prisoner must be acquitted.

Charge,—*Aiding and Abetting Gang Robbery with Murder.*

This prisoner was tried at Surat, at the first quarter sessions of the Gúzerat Provincial Court of Circuit, for the year 1829, indicted with aiding and abetting a Gang Robbery committed in the village of Hunkee, in the Purgunnah Jumbooseer, Zillah Surat, on the night of the 24th of May 1827, in which one person was killed, six others wounded, and the houses of two Patells plundered.—Plea, guilty.

It was shown by the record of the proceedings, that subsequent to the robbery, the Patells of the village of Hunkee, used great exertions in order to discover the perpetrators thereof, and that they were finally so far successful as to induce the prisoner Mota, and two other Coolies, Wuja and Umra, to give in the names of the gang, and to point out some of the stolen property, on the understanding that the Patells would obtain from the Sirkar a free pardon, and give them Rupees one hundred and fifty as a reward. The Patells of Hunkee accordingly reported this disclosure to the Magistrate.

The effect of the proceedings is to disturb the course of justice, as rendering the conviction of an offender, under such circumstances, generally impossible, in reference to the principles of good faith, which it is always essential to maintain.

The Sudder Foujdaree Adawlut therefore begs, that you will be pleased to instruct all persons vested with Police authority in the zillah under your charge, that it is contrary to their duty to hold out any promise or encouragement to offenders inducing them to confess, and that the effect of such proceeding is not only to vitiate the confession, but to cast an odium upon the character of the Police.

I have &c.

(Signed) G. GRANT,
Acting Registrar.

Bombay, Sudder Foujdaree Adawlut,
20th February 1829.

MOTA BHAOSING'S case.

and petitioned that functionary to grant a free pardon to the prisoner Mota, and the other informers. In reply the Magistrate forwarded through the Koomavisdar, certificates of pardon for the three persons above alluded to, which were duly delivered to the Patells of Hunkee. On their receipt, the sum of rupees one hundred and fifty was raised from the inhabitants of the village, but on search being made for the informers, it was discovered that two of them had absconded, and that Mota the prisoner at the bar had been apprehended on another charge of robbery and sent in custody to Broach. The Magistrate therefore considering the certificates of pardon null and void, committed the prisoner Mota to stand his trial on the above charge. Whereupon, at his trial, the prisoner admitted his guilt but urged that he had been induced to do so, under the promise of pardon held out to him by the Patells of Hunkee.

By the Court of Circuit, (W. J. Lumsden.) "Under the peculiar circumstances of this case it appears to the Court, that good faith and policy would seem to require, that the accident by which the pardon did not reach the prisoner Mota, should not prejudice him. He has been led to give information, which has been turned to his own crimination, by promise, if not, actual payment of a reward, and a virtual, if not express pledge of pardon, from the Patells, with the countenance of the Koomavisdar, and to which the Magistrate by the despatch of written pardons, may be held to have extended his sanction.—His confession therefore should not convict him according to the humane principles of our administration of justice; and moreover the act of punishing a Morkaya or informer, in such circumstances would impair a practice of much value to the police, and the punishment of one offender would in its consequences probably extend impunity to twenty. The Court records a conviction against the prisoner of the offence charged, but considers it expedient that this case should be decided by the Court of Sudder Foujdaree Adawlut, to whom it is referred accordingly without passing sentence under provisions of Clause 2nd, Section XXII Regulation XIII A. D. 1827."

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MOTA BHAOSING'S case.

By the Court(G. W. Anderson, *Officiating Senior Puisne Judge* and J. Henderson, *Acting Puisne Judge*) "The Court concurs in the opinions expressed by the 3rd Judge of the Provincial Court in the case of this prisoner. It appears that the prisoner came forward and acted as an informer, for which he was to receive pay, it appears that upon his information certain of the gang concerned in the offence were apprehended; it appears that he was promised pardon and reward, and that a certificate of pardon was actually granted by the Magistrate in his name, which however through accident did not reach him; under these circumstances, the Court is of opinion on the priciples of good faith, that the prisoner should not have been put upon his trial, but have been considered as a pardoned offender, and in fact that the forms necessary to his full pardon should have been completed, and a certificate have been granted to him. The Court on this opinion of the prisoner's case, that after having used him as an informer, he shonld not have been proceeded against, determines to acquit him."*

GOVERNMENT.

v.

BAEE MUTHEE, WIDOW OF PURBHOO RAMJEE.

Charge—*Infanticide.*

1829
16th July.

BAEE MUTHEE'S case.

The crime of a mother murdering her infant at its birth, punished by two years solitary imprisonment.

The prisoner Baee Muthee was charged with the murder of her own new born infant, and tried for that offence at the third Sessions of the Guzerat Provincial Court of Circuit for the year 1829, holden for the Zillah of Surat.—Plea, not guilty.

The prisoner was a widow residing in the village of Koondiyana, in the Zillah of Surat, and on the morning of the 6th of May 1829 gave birth to a full grown female child, the fruit of an illicit intercourse. The case was opened by the evidence

* Vide the Court's Circular Orders Nos. 24, and 54 of the printed collection.

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BAEE MUTHEE'S case.

of Purbhoo Huteebhaee, who deposed, that he was a neighbour of the prisoner, and that on passing her door early on the morning of the 6th of May 1829, he heard a young child crying in her house; that knowing her to be a widow and living alone, he thought this so strange, that he reported the circumstance to the Police, whereupon the Patell and Alumkhan, a Havildar of Peons, proceeded to the prisoner's house. Alumkhan deposed, that on reaching the prisoner's house, he asked her to produce the child to which she had given birth on that morning, and that she denied the fact of the birth. The evidence of Baee Dahee and Baee Rüttun, two women, who were employed to search the house, proved that they found the body of a female child tied up tightly in a cloth, and pressed into an earthen jar, that the child was quite dead, and appeared to have been born only a few hours. The jury, who held an inquest on the body of the deceased child, returned a verdict of wilful murder against the prisoner. Before the Police and Magisterial authorities the prisoner confessed her guilt, stating that to avoid the disgrace and ignonimy of giving birth to an illegitimate child, she suffocated it and placed it in the jar where it was found; but on being called on for her defence on her trial, she declared that when the child was born its neck was injured, that it died from that cause, and that she did not kill it; but this assertion was met and rebutted by the evidence of the jury, who examined the body of the deceased.

By the Court of Circuit (J. A. Taylor,) The Court on the evidence recorded in these proceedings, found the prisoner guilty of the murder of her new born infant, and under the provisions of Clause 4, Section 26 of Regulation XIV of 1827, sentenced her to be imprisoned in the Criminal Jail of the City of Surat, for the term of her natural life, referring the case for the confirmation of the Superior Court.

The Sudder Foujdaree Adawlut (present G. W. Anderson, E. H. Baillie, and J. Henderson,) concurring in the conviction of the prisoner and applying the provisions of Regulation XIV of 1827, to the crime of which she has been found guilty, mitigated, under all the circumstances of the case the sentence passed on her to two years solitary imprisonment.

GOVERNMENT.

v.

BABUNSHETTE POONDLICKSHETTE.

Charge—*Forgery.*

1829
8th October.

The case of BABUNSHETTE POONDLICKSHETTE.

Forging and uttering a note or order with a fraudulent intent, punished with public disgrace and two years imprisonment with labour.

This prisoner was tried before George Lettsom Elliot, Esquire, Criminal Judge of the Southern Konkun, on 17th day of September 1829, on an indictment charging him with forging and uttering on the 29th December 1828, a certain order for the delivery of goods in the name of Anunt Rowlee Kamut, with intent to defraud one Dewjee Kusla.

The forged order was as follows.

"To Dewjee Kusla, Wanee of Anow."

"Please deliver to the bearer 1½ kandee of rice on my account and take his receipt."

ANUNT ROWLEE KAMUT.

Malwan, 29th December 1828.

It was fully proved, that the prisoner wrote this order, and sent it to the village of Anow by the hands of Sheikh Enoos. Sheikh Enoos deposed that he presented the order to Dewjee Kusla, received 1½ kandee of rice, gave a receipt for the same, (which was produced in Court) and then shipped the rice in a boat and brought it to Malwan, where he made it over to the prisoner. Anunt declared that he neither wrote the order produced, nor did he receive the rice; the delivery of the rice to Sheikh Enoos was proved by Fukeera the son of Dewjee Kusla, and its conveyance from Anow to Malwan by Kanoo the tindal of the boat.

The prisoner on being called on for his defence denied all knowledge of the forgery and subsequent transaction.

Regulation XIV Sec. 17, clause 3rd A. D. 1827.

The Criminal Judge upon the evidence adduced found the prisoner Babunshette Poondlickshette, guilty of Forgery as laid in the indictment, and sentenced him to be led round the town of Malwan upon a Jackass, with a paper attached to his back explanatory of the crime of which he had been convicted,

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The case of BABUNSHETTE POONDLICKSHETTE.

and to be imprisoned and kept to hard labour for the period of two years and one day, subject to the confirmation of the Sudder Foujdaree Adawlut.

The Court of Suddur Foujdaree Adawlut (present G. W. Anderson, E. H. Baillie, and J. Henderson) after mature deliberation on the whole of the proceedings, concurred in the conviction and confirmed the sentence passed against the prisoner.

YEMAJEE BIN KUKHOJEE.

v.

LUXIMON, BIN BALLAJEE, and two others.

Charge—*Kidnapping.*

1829.
14th October.

The case of LUXIMON BIN BALLAJEE, and others.

Three prisoners being convicted of stealing and selling a female child, two were sentenced to three years imprisonment with hard labour; and the third under mitigating circumstances (age and infirmity) to one year of ordinary imprisonment.

The prisoners, Luximon, (his wife) Radhee, and Yemona, were tried before the Criminal Judge of the Northern Konkun on the 8th day of August 1829, charged with stealing and selling one Suckee the daughter of Yemajee, the prosecutor, a child of eleven years of age.—The prisoners severally pleaded, not guilty.

It appeared in evidence that the prosecutor a resident of Panwell in the Konkun, on the evening of the 31st of January 1828, missed his daughter Suckee, whom he had shortly before seen playing near his own house; a searching enquiry was instituted by the Police, but without success, and no tidings were heard of the girl until about four months afterwards, when Mooktee, a gardner's wife, on her return from market from Bombay, told the prosecutor, that she had there seen his daughter Suckee dressed as a Mussulmanee, and that Suckee said, she hed been sold by the prisoners, Luximon and Radhee, to one Khuteeb, a Mussulman in the Bhendy Bazar. The prosecutor on receiving this information, in company with his relation Bappoo, proceeded to Bombay to the house of the aforesaid Khuteeb, where they found his daughter, Suckee; on questioning Khuteeb, he acknowledged having bought

1829

The case of LUXIMON BIN BALLAJEE and others.

Suckee, of the prisoners Luximon and Radhee, for Rupees one hundred and fifty; that on regaining his daughter, he assembled his caste, and that Luximon and Radhee on that occasion confessed to stealing his daughter, and to selling her to Khuteeb, and were in consequence mulcted in the sum of Rupees ten, which he received as a compensation. The testimony of Omajee, one of the heads of his caste confirmed the admissions so made, by the prisoners, Luximon and Radhee. The girl Suckee on being examined on oath, said, that she was enticed by a child into the house of the prisoner Yemona, where she met Radhee, who gave her something to drink which stupified her, that on the following day the prisoners Luximon and Rahdee put her into a boat and took her to Bombay, where they sold her to Khuteeb, that witness heard the bargain made and saw the purchase money paid in gold mohurs, and that some months afterwards she met Mooktee, and begged her to tell the witness' father, that she had been sold.

The prisoners Luximon and Radhee on being put on their defence, totally denied the charge. The prisoner Yemona, admitted in her statement, that the girl Suckee was secreted in her house when a search was made in Panwell for her, but denied all knowledge of the sale.

The Officiating Criminal Judge (A. Bell) found the prisoners severally guilty of the charge preferred, but in awarding punishment, he was of opinion, a less degree of criminality and culpability attached itself to the prisoner Yemona than to the other two prisoners, and also taking into consideration Yemona's aged and infirm state, he resolved to pass the following sentences. That you Luximon bin Ballajee and you Radhee wife of said Luximon bin Ballajee, be severally imprisoned and kept to hard labour in the Criminal Jail of Tanna for the space of three years, subject to the confirmation of the Superior Court, and that you Yemona, be ordinarily imprisoned for the space of one year.

Regulation XIV Sec. XXXIII. clause 2nd of 1827 A. D.

On the case coming before the Suddur Foujdaree Adawlut, the Court (present E. H. Baillie, and J. Henderson *Puisne Judges*,) convicted the prisoners, Luximon and Radhee, of the offence, only of stealing the child Suckee, the daughter of Ye-

1829

The case of LUXIMON BIN BALLAJEE and others.

majee bin Kukhojee, in the town of Panwell, in the Northern Konkun, and confirmed the sentences passed upon them by the Officiating Criminal Judge.

AMEEN BURREKHAN,

v.

FATIMA, HIS WIFE.

Charge,—*Attempt to murder.*

1830.
12th August.

FATIMA'S case.

The prisoner convicted of an attempt to poison her husband, and sentenced by the Session Judge to suffer ten years imprisonment, which sentence was in consideration of her age, sixteen years, mitigated by the Sudder Foujdaree Adawlut to eighteen months solitary imprisonment.

This prisoner was tried before the Zillah Court of Dharwar, on the 10th day of July 1830, on an indictment charging her with wilfully and unlawfully administering to her husband Ameen, in his food, a quantity of poison, called white arsenic, (Safaid Soomul,) and sugar of lead (Moordarsing) on two occasions, to wit, the 2nd and 3rd of November 1829, with intent to murder her said husband.—Plea, not guilty.

Ameen deposed, that on his return home one evening in November 1829, his wife, the prisoner, brought him his meal, of which he partook, and shortly afterwards became very ill with a violent burning pain in his stomach, accompanied by vomiting and purging; the next day he was somewhat better, and his wife brought him more food, of which also he partook, and was again taken ill as on the previous day, but in a more alarming degree, and became quite senseless. Fuckroo and other relations of the prosecutor affirmed, that while they were lamenting Ameen's state, a child by name Fatee, came to the house, and gave the prisoner some milk of the Seind tree, which is poison; the child on being asked, said, she had brought it to the prisoner for the last three days by her direction; thinking this circumstance very suspicious, they began to question Fatima the prisoner, who at last made a confession to the following effect,—that she quarrelled with her husband, and carried on an illicit intercourse with one Pootta, by whose advice she determined to poison her husband and live with

1830

FATIMA'S case.

Pootta, that for this purpose Pootta supplied her with some poison, which he told her to mix with the juice of the Seind tree, and to administer it to her husband in his food, and that she accordingly did so, on the evening of the 2nd, and morning of the 3rd of November 1829. After making the above confession, the prisoner produced the remainder of the poison, which was subsequently proved to be white arsenic and sugar of lead. Ameen suffered severely for two days and then gradually recovered.

The Session Judge (J. Nisbet) found the prisoner guilty of an attempt to commit murder, on the person of her husband, as laid in the indictment, and sentenced her, to be imprisoned with labour suitable to her sex, for the term of ten years.

Section I, clause 2d of Regulation XIV, of 1827.

The Session Judge in his letter referring the proceedings in this case for the confirmation of the Sudder Foujdaree Adawlut, remarked with reference to the heinousness of the crime of which the prisoner had been convicted, that he had been induced to award a moderate extent of punishment, out of consideration of the prisoner's youth, sixteen years of age, and a belief of her having been instigated by the advice of her wicked and profligate companion.

The Sudder Foujdaree Adawlut (present J. Sutherland and E. Ironside,) having maturely weighed the evidence in this case, concurred in the finding recorded by the Session Judge, that the prisoner was guilty of an attempt to poison, but in consideration of her youth, determined to mitigate the sentence of ten years imprisonment passed upon her, to eighteen months solitary confinement in the Zillah Jail of Dharwar.

GOVERNMENT.

v.

KUMBLEE WULUD HYBUTTEE, and five others.

Charge,—*Thuggee.*

1830
6th September.

The case of KUMBLEE WULUD HYBUTTEE & five others.

In this case a gang of fifty organized Thugs issued from their haunts among the independent states of Bundlecund, and made an expedition into the Honorable Company's Territories in Khandeish, where they committed four highway robberies, murdered seventeen persons, and robbed them of property valued at upwards of Rs. 20,000. On their return to Hindoostan seven of the gang were apprehended by the Magistrate of Mynpooree, and forwarded to Dhoolia; where one prisoner died in jail, and the remaining six were tried, convicted, and sentenced to death, by the Session Judge. The sentences of four of these prisoners received the confirmation of the Sudder Foujdaree Adawlut, and those of the remaining two were mitigated to transportation for life, in consideration of the age of the prisoners, eighteen and twenty years respectively.

The trial of this case was commenced before Saville Marriott Esquire, holding a Court of Circuit at Dhoolia for the Province of Khandeish, on the 24th day of December 1829.

The prisoners Kumblee, Pooran, Khurga, Aman, Ramlall and Chutr, were arraigned on an indictment, charging them in the first count, with having on or about the 2nd of February 1828, at or near the village of Patoonda in the Province of Khandeish, murdered, by strangulation, Shewram and Dowlutram, Marwarees, and one Hurdeo, a Brahmin, and with having robbed them of property of or about the value of rupees four hundred.—In the second count, the prisoners were charged with aiding and abetting in the murder of the aforesaid Shewram and Dowlutram, Marwarees, and Hurdeo, Brahmin, by joining in league and acting in conjunction with a gang of about forty or fifty persons, who, in the month of December 1827, quitting Bundlecund in Hindoostan, proceeded into Khandeish and the Deccan for the purpose of procuring booty, by the commission of various robberies by which gang, the Marwarees and Brahmin aforesaid, were murdered at the above time and place, such association and league with the said gang having commenced previously, and continued subsequently, to the period, when the said murders were committed.

The prisoners severally pleaded, not guilty.

The evidence on the part of the prosecution was in substance as follows.—Khundee, an accomplice and informer, who received a pardon and was admitted as a witness for the prosecution, stated, that he was induced by Kurreemkhan, a Burkundaz, belonging to the Magistrate of Mynpooree, under the hope of reward, and under a solemn pledge of impunity, to join the gang for the object of gaining information,

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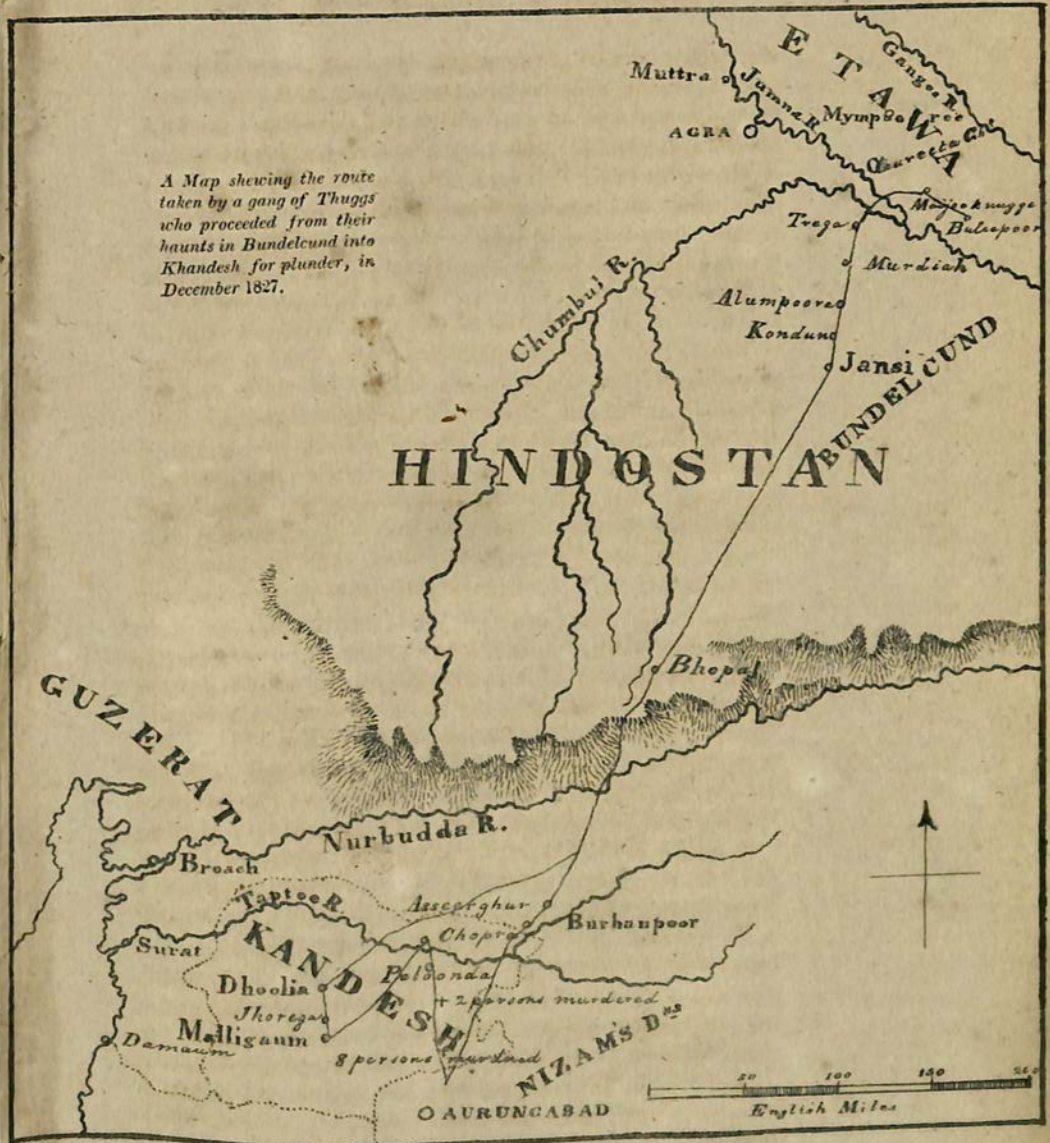
The case of KUMBLEE WULUD HYBUTTEE & five others.

which might lead to their detection; that he in consequence enlisted himself at Rupees three per mensem in the service of the prisoner Aman, whom he knew to be about to start on a plundering expedition; that a few days afterwards in the month of December 1827, deponent with Kumblee and Chutr, left their village, Bulleepoor, and went to Aman's house in Maijoknugger, from whence the six prisoners at the bar with one Cheda and himself, in all eight, started and crossed the Jumna at the Chureeta Ghaut. The next day they crossed the Chumbul, and came to Trega, where they were hospitably received at the house of a friend of Aman's by name Chotee, who also joined the party with fifteen men. At Murdiah, the next stage, Doorjun and Nuthoo with their people joined the gang, and they all marched on to Alumpoora; here they were entertained for several days at the house of one Shaik, a Musulman, and he too, with ten men, eventually joined the gang. At this time the gang was about fifty strong, of which Aman, Chotee, Doorjun, and the Shaik, were Sirdars. They next proceeded through Kondun to the city of Jansi, where the Sirdars held a consultation, and having matured their plans, they fairly set out for the Deccan, and after about twenty-five days of continuous travelling reached the Nurbudda; crossing this river they struck south to Asseerghur, thence to Burhanpoor, where after much deliberation the Sirdars resolved to push on for Aurungabad; the gang made ten marches towards that city, when for some reason, unknown to the deponent, the route was changed and the gang resolved to turn back in the direction of Khandeish. On the second day after this retrograde movement, they fell in with a Havildar on a tattoo, with two sepoys, all in uniform, who travelled along the road with the gang, that same day they met five other travellers, and all made their bivouac together in the evening at a well: the Sirdars, Aman, Chotee, and the Shaik, roused the party about midnight, and said, as the sun rose early, they must march; soon after starting, the party entered a thick jungle, where the gang seized and strangled the Havildar, his two sepoys, and the five travellers, robbed them of their property with which they loaded two tattoos, and buried the


A Map shewing the route taken by a gang of Thuggs who proceeded from their haunts in Bundelcund into Khandesh for plunder, in December 1827.
Muttra
Jumna R.
Gange R.
Mympoo
AGRA
ETAWA
Chumbul R.
Trega
Mujhoukhuggee
Bulwpoor
Murdiah
Alumpoora
Kondua
Jansi
BUNDELCUND
HINDOSTAN
Bhopal
GUZERAT
Nurbudda R.
Broach
Tapteer R.
Asseerghur
Burhanpoor
Surat
Chopra
KANDESH
Dhoolia
Pulsonda
+ 2 persons murdered
Jhoregaon
Malligaum
Damaum
8 persons murdered
NIZAM'S Dns
AURUNGABAD
English Miles

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bodies in the jungle. Deponent was an eye witness to these acts. On the road from thence the gang met two other travellers, who shared the same fate, for the sake of some brass pots they possessed. Two days march from this, the gang stopped at a deserted temple, near the village of Patoonda, in Khandeish, and found two Marwarees and a Brahmin halting there: at night, the gang was roused, and Aman, Chotee, Pooran, and the Shaik, rushed upon the three travellers, who were lying asleep on the ground, and strangled them. Deponent was close by in the temple, looking over a low wall, when this occurred. Aman afterwards called deponent from the temple to assist Pooran to carry away one of the dead bodies, which he then had on his back, deponent was obliged to comply, and with a number of the party conveyed the three bodies into the jungle; after proceeding some distance, deponent with a Musulman was ordered back to the temple, and he could not say how the bodies were disposed of. Aman, Pooran, and the others, who went on with the bodies did not return until the next morning. About four hundred Rupees worth of property was taken on this occasion. Deponent recognized the prisoners positively, and was sure they were all present and assisting at the murder of the Marwarees and the Brahmin here mentioned. After this the gang continued its march, and in two days reached the town of Chopra, where the Sirdars agreed to make a detour and go to Malligaum; from Malligaum, the gang travelled along the high road seven koss towards Dhoolia, when they met, near Jhoregah, four Sowkars with two tattoos laden apparently with treasure; the Sirdars entered into conversation with these Sowkars, and travelled with them, deponent and another Mussulman were by the orders of Aman sent back in the direction of Malligaum to keep a look out, and to give an alarm if any persons should approach from that quarter; on rejoining the gang, deponent heard, that the four Sowkars had been strangled, and one of the party told deponent they had at last done well, and hit upon gold mohurs, and gold bars. (The property plundered on this occasion was valued at 19,000 Rupees.) They then travelled on to Dhoolia, where they stopped one night, and from thence returned with all possible celerity home

1830

The case of KUMBLEE WULUD HYBUTTEE & five others.

to Bundlecund in Hindoostan, eight nights were employed by the Sirdars on their road back in sharing the plunder and spoil, which was first divided into four lots; one for each of the Sirdars, and they gave what they chose to their own dependents; deponent got from Aman four gold mohurs as his share; he often heard the Sirdars cutting the gold bars, but never saw them. On reaching Hindoostan the Sirdars separated and returned to their several villages. Deponent with Aman's party arrived at home on the day of the Hoolee in the month of Chytre, *(i. e.)* in March 1828. Shortly afterwards, deponent met Kurreem Khan the Burkundaz, and told him all he knew; deponent was then taken before the Tannadar and gave information, which led to the apprehension of the prisoners and the recovery of some of the stolen property.—Sumbhoo a relation of the deceaseds, Shewram and Dowlutram, Marwarees, came forward at the trial, and from among a variety of property before the Court, picked out a red turban and a brass pot as being the property of the deceased Shewram, and deposed to his having these articles with him, when travelling through Khandeish in February 1828, and swore most positively to their identity. Two Police Peons were next called into Court, and they deposed, that they searched the house of the prisoners under a warrant from the Magistrate of Mynpooree, and found the very same red turban in the house of Doorjun, (a prisoner who died in Jail at Dhoolia,) and the brass pot in the house of the prisoner Khurga. Another Police Peon deposed, that by the order of the Magistrate of Khandeish, he accompanied the informer Khundee to Patoonda, Khundee, took him to a temple near that village, and showed him the spot where the gang murdered two Marwarees and a Brahmin, that spot is in Khandeish; Khundee then took him through the jungle towards the Taptee, the direction in which they carried the bodies, and pointed out a tree where they rested, from whence, Khundee said, he was ordered to return to the temple.—The inquest report dated 30th of March 1828, proved the fact of three bodies having been found in a dry well in the jungle a little to the north of the village of Patoonda, in the last stage of decay.—The confessions of the prisoners

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The case of KUMBLEE WULUD HYBUTTEE & five others.

were of two sorts—those given before the Tannadar immediately after apprehension, which were full and detailed, charging each other with the murders and robberies that took place;—and those before the Magistrate of Mynpooree, which corroborated the main features of the narrative of the expedition given by the informer Khundee, with the exception of the actual commission of the various acts of indiscriminate murder therein set forth, and of these acts they denied all knowledge, urging that they were only the servants of the Sirdars unapprehended, and obliged to accompany the gang; that they always followed in the rear, and saw none of the enormities committed, which were laid to their charge.—These confessions the prisoners retracted before the Court of Circuit, but from the testimony of the attesting witnesses, it was satisfactorily proved, that the confessions had been voluntarily made.

The prisoners in their defence endeavoured to prove an alibi, in which they entirely failed.

The Session Judge (J. Kentish) before whom this trial was completed on the 17th day of June 1830, after carefully summing up and weighing the evidence recorded in the voluminous proceedings in the case, was of the following opinion, "that there is the fullest proof of each of the confessions made by the prisoners before the Tannadar, and that notwithstanding their denial in several points, many of the facts related on that occasion were subsequently confirmed before the Magistrate of Mynpooree, which latter confessions have also been fully established in evidence before this Court.—The foregoing confessions independent of the weight to be attached to each intrinsically, are further fully corroborated by the evidence of the informer Khundee, an eye witness to many of the atrocities committed by this gang; this evidence corresponds with almost every particular stated by the prisoners before the Tannadar, and is again fully borne out in a powerful degree by the discovery of the bodies and the identification of the property of the deceased Shewram; at the time Khundee gave his information before the Magistrate of Mynpooree in Hindoostan, he could not possibly have been aware of the bodies having

1830

The case of KUMBLEE WULUD HYBUTTEE & five others

been found in Khandeish; nor could he have known that property which at the time of the apprehension of the prisoners, he declared to be a part of the plunder taken from the Marwarees at Patoonda would be subsequently identified; these important facts strengthened by the prisoners' own confessions, lead the Court to place every confidence on the evidence of the informer, who distinctly states, that the whole of the prisoners were with the gang on the occasion of the murder at Patoonda, a village within the jurisdiction of this Court." The Session Judge after making some further remarks on various points of the evidence, found the prisoners severally guilty of the first count of the indictment, viz.;—of the wilful murder of Shewram, Dowlutram, and Hurdeo,—and in passing sentence the Session Judge taking into consideration the serious nature and magnitude of the offence of which the prisoners were convicted, and in the anxious hope of preventing by the force of example the repetition of the atrocities committed by so formidable a body of men, associated for the purpose of murder and plunder, sentenced them to be one and all hung by the neck until they be severally dead, and that their gallows be left standing,* and their bodies be suspended in chains. This sentence to be subject to the final orders of the Superior Court.

The Court of Sudder Foujdaree Adawlut (J. Sutherland, and E. Ironside,) after mature deliberation on the whole of the proceedings, concurred in the convictions recorded against all the prisoners by the Session Judge, and confirmed the sentences of death passed upon the prisoners, Kumblee, Poorun, Khurga, and Aman, but in respect to Ram Lall and Chutr, on account of their youth, being only eighteen and twenty years of age respectively, the Court mitigated the sentence of death to transportation for the terms of their natural lives.

* This practice is now prohibited. Vide Court's letter of 10th February 1835.

GOVERNMENT.

v.

GUNNAH PYAH OORF CUTTREE,

and 158 others, inhabitants of Dewallee.

Charge,—*Murder.*

1830
20th September.

The case of GUNNAH PYAH, and 158 others

In a case where one hundred and fifty-nine prisoners were tried for the murder of a person supposed to practise Sorcery, twelve were convicted by the Session Judge of murder, and seventy-three of instigating and aiding in the offence, and the whole eighty-five were sentenced to suffer death; the remaining seventy four prisoners were acquitted. Held by the Sudder Foujdaree Adawlut that in consideration of the gross superstition displayed in this case, it was unnecessary to confirm so severe a sentence on so many deluded beings. The Court therefore selected three prisoners, whom they considered, the most culpable & confirmed the sentence of death passed upon them. The Court also selected four other prisoners and sentenced them, under circumstances of extenuation, one to transportation for life and the other three to two years solitary imprisonment with flogging.

These prisoners were severally tried before the Session Judge of the Konkun, on the 20th day of July 1830, for the wilful murder of one Bendia bin Raghia, whom they suspected of practising witchcraft, and of instigating evil spirits to visit their village with cholera.

The Session Judge, (A. Bell,) in his finding observed, that the crime for which the prisoners were tried had in a great measure decreased, a circumstance which might be accounted for, from the fact of the fatal disease, which was the cause that led to the deceased's tragical death, having been less frequent in its visitations than formerly. It was recorded in evidence, that the deceased formerly resided in the village of Dewallee, but that he left it about eight years ago, and went to reside in the neighbouring village of Oolvay, on the recommendation of the Koomavisdar, in consequence of a complaint having been preferred against him by the villagers, that he practised witchcraft. The inhabitants of Dewallee appeared to have been ever since impressed with the idea, that the deceased was possessed with a devil, which enabled him to be revenged on his enemies, and whenever the members of their different families were suffering from cholera, or other causes, they were in the habit of sending for the deceased, for the purpose of charming away the disease. About the time the murder occurred, cholera had caused great havoc, in the village of Dewallee, which circumstance induced the villagers to send for Bendia, but the cholera still continuing to rage, they finally resolved to murder Bendia, whom they considered the author of the pest under which they were labouring. With this purpose and intent, on the morning of the 1st of June 1830, a number of the villagers of Dewallee sailed to Oolvay where they found Bendia fishing; on informing him, that he must

1830

The case of GUNNAH PYAH, and 158 others.

This case coming under the notice of the Honorable the Court of Directors, instructions were issued that a large number of persons in cases of this nature, were never to be placed on trial without a prior reference to Government.

accompany them to answer a charge of witchcraft, he gave a ready assent, and they all returned to Dewallee together, from whence they took him to a temple specially dedicated to cholera, and there formally arraigned him before four Bhuguts or Wizards in the presence of the Patell, and a concourse of three hundred villagers, on a charge of witchcraft. After some ceremony the Bhuguts pronounced Bendia guilty, and thereupon the assembled crowd set upon and murdered the deceased with sticks. In order to remove the enchantment the deceased was supposed to possess, nails and wooden pegs were driven through various parts of his body and his penis was cut off and thrown into the same hole in which he was buried with his face downwards.—There was very little doubt, but that the deceased's death was planned by the whole village, and those persons who were not present at the time this resolution was formed, were well aware of the determination the ringleaders had come to on the subject. The Session Judge found the prisoners, Gunnah, Nagoo, Joma, Nama, Cumla, Naga, Dhurma, Janoo, Ragha, Hendia, Canna and Moonda, who all confessed to having assaulted the deceased, guilty of the murder of Bendia bin Raghia; Bokoo bin Nagoo the Patell of Dewallee with the four Bhuguts and sixty-eight other prisoners, guilty, of aiding and abetting in the said murder, and the remaining prisoners from want of proof, he found not guilty, and ordered their acquittal. The Session Judge next considered the award of punishment, and upon mature deliberation on the heinous nature of the crime proved against the prisoners convicted, he felt himself compelled at the requisition of the Law as laid down in Regulation XIV. Section XXVI. Clause 4 of 1827, to pass upon the above eighty five prisoners convicted, a sentence of death.—The Session Court lastly proceeded to refer the case for the final decision of the Sudder Foujdaree Adawlut, with a strong recommendation to mercy on behalf of sixty-eight of the prisoners, as there appeared to be circumstances in their case admitting of mitigation.

The Sudder Foujdaree Adawlut (present J. Sutherland,

1830

The case of GUNNAM PYAH, and 158 others.

Senior Puisne Judge, and E. Ironside, *Puisne Judge*,) having fully weighed the whole of the evidence and proceedings handed up in this case, recorded its judgment. That this was one of those cases which proceeded from the ignorance of an extensive community placing confidence in the faith of sorcery and magical acts. On the acquisition of the Northern Konkun, crimes proceeding from such causes were common, having been in some measure countenanced by the former Government of the country.—The cholera or any other visitation of Providence either affecting the community or individuals was the signal for attack on some devoted victim, supposed to have brought on the scourge by magical rites, and as there were persons who ostensibly pretended to supernatural power, it was no difficult matter to single out an individual possessing the reputation of dealing in the art, which to do in times of this description might be said to be the death warrant of the victim, for he was either put to death in the most barbarous manner, or obliged to lead a life of misery that soon ended from cruel oppression. The cholera that formerly raged had left the country, at least its severity had become less. This aided in a great measure by the proceedings of the Courts of Justice exercised at first with great leniency, and also the benevolent exertions of the humane Mr. Marriott, who judiciously administered the office of Magistrate in the Konkun Zillah, tended to regulate and correct opinions, which were imbibed by the natives of the country with their earliest ideas.

It appeared that the villagers assembled and went through the form of a mock trial, to which the deceased had been summoned, and apparently as a means of evading that retributive justice which they feared would await the act of the few, numbers were found to countenance and take a share in the atrocious act, in the belief, that the ruling authority would hesitate in consigning so many to severe punishment.—In regard to the conviction there was no doubt whatever, but the Court regretted that for the better ascertaining the nature and extent of the guilt of each prisoner, some of the less guilty were not received as evidence for the prosecution under a free pardon.

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As the Court concurred in the conviction generally, the next duty it had to perform was to consider what sentence should be passed finally in the case. By the Regulations of Government for the crime of murder, the sentence of death, imprisonment for life, or transportation for life and solitary imprisonment with corporal punishment is definitely prescribed, but the Sudder Foujdaree Adawlut not deeming it necessary for the ends of justice, to carry out the capital sentence awarded by the Session Judge against so many deluded beings, determined to select those they considered most culpable.—The Court accordingly resolved to select the Patell Bhokoo Nagoo, as the person who from the situation he held in the village, had the power as it was his duty by virtue of his office, to prevent the murder, instead of acting as he did.—The Court considered he must assuredly have known that the course he countenanced was illegal, and if he had been actuated with any desire to do his duty with fidelity, if not convinced of the illegality, at all events doubts might have occurred that would have involved a reference for instructions to the Mamlutdar of his district, but it was clear this course was foreign to his mind, and every thing betokened a premeditated outrage against the laws of the country on the part of himself and the others concerned.—The Court also considered it was shewn that he countenanced the assembling of the villagers for the unlawful purpose for which the unfortunate man was called before them, where there were in attendance four persons reported to be Wizards, to pronounce on the guilt of the deceased, as the person to whose magical spells were to be attributed the suffering of the people under the visitation of the Cholera Morbus. The collection of sticks near the temple, as well as the forms under which the assembly acted, shewed that the murder was premeditated, for no sooner were all prepared than one of the Wizards, Nuthoo, pronounced his guilt, and the assembly proceeded instantly to destroy the deceased in the most barbarous manner, abusing the corpse by mutilation in the most ignominious way. The Sudder Foujdaree Adawlut therefore in regard to Bhokoo Nagoo determined as a fitting example to confirm the sentence of death passed upon him by the Offi-

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ciating Session Judge. The Murvee of the village or person who attends to the Patell's orders, Chamba, also convicted, appeared to the Court to have been zealous in preparing for the murder in all ways, and as a village officer from whom more was required if possible than from others, it was determined to mitigate the sentence of death passed upon him to transportation for life.—It was considered by the Court to be best calculated to serve as a warning, to visit the Wizards who acted on this occasion, with as much severity as possible, for it was from the machinations of these people and their avowed acts that superstition was fostered among the community, and when they carried their pretended power so far as to endanger the lives of persons by their false verdicts, as on the present occasion, it was just, the Court remarked, that severe retribution should be demanded. Viewing therefore Nuthoo, who pronounced the fatal guilt on the deceased, in this light, the Court affirmed the sentence of death passed upon him, while in respect to the others, Bendoo, Rama and Gondoo, the sentence passed upon them was mitigated to two years solitary confinement with flogging.

The other prisoners the Court held, formed part of the great body of men, who committed the murder; they were all considered to be equally guilty with one exception, for although some confessed to striking with sticks, others with their hands, it was clear that all were actuated by the same animus, and should be punished, if at all, equally: but as the Court did not see a necessity for subjecting so large a body to the heavy penalties within its power, it refrained from passing on them any sentence, and resolved to submit the whole trial for the merciful consideration of the Honorable the Governor in Council to extend to these unfortunate men such relief as he might think proper.—The exception above referred to was the case of Joma, who in the most inhuman manner mutilated the remains of the deceased; this person was singled out for the great depravity he had displayed, in a case where the lives of all had become justly forfeitable, and being deserving of the heaviest punishment, the sentence of death passed on him was confirmed.

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In respect to the remaining prisoners the Court directed the Registrar to transmit the proceedings held in this trial to Government, with the view that the merciful consideration of the Honorable the Governor in Council be extended, and a free pardon be granted, to all save those above condemned. The Judicial Secretary to Government on the 17th of September 1830, in reply to this communication, conveyed the sanction and approval of the Honorable the Governor in Council to the recommendation of the Judges.

Whereupon the Court (J. Sutherland, E. Ironside and E. H. Baillie,) further resolved.—"That the Honorable the Governor in Council having been pleased in virtue of the powers vested in him under Clause 2nd, Section XXXI. Regulation XIII of 1827, to grant a free pardon to the remaining prisoners upon whom sentence was not passed by the Court at its last sitting in this case, it is hereby directed and ordered, that the said prisoners be first taken to the place of execution and there after having witnessed the penalty of the Law carried into effect upon the three criminals whose sentences are confirmed; and having been addressed by the Judicial Officer superintending the execution upon the nature of the crime in which they have been concerned, the erroneous views entertained by them with respect to the power of sorcery, and warned that any recurrence of the offence will be visited by the heaviest penalties of the law, the mercy extended to them by Government be communicated to them and that they be then and there forthwith discharged."

Held by the Sudder Foujdaree Adawlut that a sentence of death having been passed by a Session Judge, the directing the execution to be carried into effect with the additional marks of public disgrace, specified in clauses 2, 3, and 4 Sec. IV. Reg. XIV of 1827, was no enhancement of the punishment, and therefore might be added at the discretion of the Sudder Court.

The Court also directed that the sentences of death passed upon the prisoners Bhokoo Patell, Nuthoo and Joma, be carried into execution at the village of Dewallee with the additional marks of public disgrace specified in Clauses 2, 3, and 4, Section IV. of Regulation XIV of 1827.*

* This case having come under the notice of the Honorable the Court of Directors, they were pleased to issue in their despatch dated the 11th of July 1834, the following instructions.

"Superstition, although sometimes as in the case under notice, attended with deplorable excesses, is to be regarded more as an error than as a crime, and in dealing judicially with such breaches of the law, as are committed under its

BHUGWAN AND LALLA.

v.

HURRYA, GOSALA AND NUTHWA.

Charge,—*Misconduct of private Servants.*

1830
12th December.

The case of HURRYA, and two others.

Halees or bond slaves, who leave their masters' service, are only subject to punishment as ordinary servants in the manner laid down in clause 3rd, Section XVIII. of Regulation XII. of 1827.

Hurrya the bond slave of the prosecutor Bhugwan, and Gosala and Nuthwa, the bond slaves of the prosecutor Lalla, were brought before the Magistrate of Surat, on the 7th day of October 1830, charged with absconding from their masters' service, and being convicted, were sentenced to receive six stripes of a rattan each, and to be imprisoned until they should consent to return to the service of their respective masters.

The Court of Sudder Foujdaree Adawlut observing the irregularity of the Magistrate's procedure in this case, called upon that functionary to certifiy the proceedings held by him therein.—The case was subsequently called on for review on the 12th of December 1830, when the Court (present E. Ironside and E. H. Baillie,) concurred in the following resolution.—"The Court observes that the sentences passed on the prisoners are illegal on two grounds.—First. The prisoners though domestic slaves, can only be punished as ordinary servants under the provisions of Clause 3rd, Section XVIII, Regulation XII of 1827, which does not admit of stripes being adjudged; and Secondly. The Rugulations require that in every sentence the term of imprisonment should be definite, and not left unlimited as in the case under review."—These sentences were therefore annulled, and the immediate release of the prisoners if in custody was ordered.

influence, the great object should be to reclaim the agents from their delusion. When moreover one hundred and fifty-nine persons had been apprehended for being concerned in a murder, it was impossible that a capital punishment should be enforced against the whole number, and it became necessary to select such of them as might seem most deserving of punishment. On both the grounds just stated a reference should in the first instance have been made for the orders of Government, and only such number of the prisoners in custody as Government deemed indispensable should have been brought to trial." Vide Court's circular No. 87."

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It was further directed by the Court, that an Interpretation be published on Section XVIII, Clause 3rd of Regulation XII of 1827, declaring that Halees or bond slaves, who leave their master's service are only subject to punishment as ordinary servants in the manner laid down in this Clause and Section.

SAWAI PURBHOO,

and

KALABA BIN GUNNAY.

v.

WITTOOJEE BIN RUGSHETTE, and 13 others.

Charge,—*Gang Robbery.*

1831
3rd January.

The case of WITTOOJEE RUGSHETTE, and 13 others.

All trials before Session Judges are to be conducted agreeably to the forms prescribed for Courts of Circuit in chapter III of Regulation XIII of 1827.

These prisoners were brought before the Session Judge of the Konkun, on circuit at Rutnagiree, on two separate indictments charging them with breaking into and robbing the houses of the prosecutors, on the night of the 19th of October 1829, of property of about the value of Rupees 5,069.—Plea "Guilty."

These cases were first tried before the *Acting Senior Assistant Criminal Judge*, (H. Brown,) who found the prisoners one and all guilty on both indictments, but considering the serious nature of the crimes proved, which called for an award of punishment beyond his penal jurisdiction, he stayed the sentence under the provisions of Regulation XIII. Section VIII. Clause 2nd of 1827, until the next half yearly Sessions of the Criminal Judge.

In the interval between this commitment and the arrival of the Session Judge on circuit at Rutnagiree, Regulations III, and IV, of 1830, were passed by the Honorable the Governor in Council of Bombay, and became Law, whereby the Provincial Courts of Circuit were abolished, and their

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The case of WITTOOJEE RUGSHETTE and 13 others.

powers and functions vested in Session Judges, which designation it was further enacted was to be used throughout the Regulations in supercession of the appellation of Criminal Judge.

On the 20th day of April 1830, the prisoners were placed at the bar before the Officiating Session Judge (A. Bell,) who after attentively reading over in open Court the whole of the proceedings in the investigation of the case before the Acting Senior Assistant Criminal Judge, and concurring with that officer in the conviction of the prisoners on both charges of gang robbery, sentenced them severally to be imprisoned and kept to hard labor for the term of ten years, subject to the confirmation of the Sudder Foujdaree Adawlut.

The Court of Sudder Foujdaree Adawlut, (present J. Sutherland, E. Ironside, and E. H. Baillie,) considered that the late Officiating Session Judge in these cases, had mistaken the duties of a Session Judge, in holding trials under Section III of Regulation III of 1830. It was therein enacted that "the functions and jurisdiction of the Session Judge shall be those of the the Criminal Judges and the Court of Circuit, as the same are provided for in Regulation XIII of 1827," consequently, the conducting and recording of trials before Session Judges should be agreeably to the forms prescribed for that latter Court in Chapter III of that Regulation.—But the Officiating Session Judge, appeared to the Court, to have confused the functions of a Court of Circuit with those of a Criminal Judge, and after having adhered to the forms required for the Court of Circuit in all preliminary matters, namely, the giving fifteen days notice, preparing calendars, &c. to have taken up the trials on the principles laid down for the guidance of the Criminal Judge, and under this view, to have considered it sufficient to have satisfied his mind from the perusal of the evidence taken before the Assistant Judge of the guilt of the prisoners, and thereon, to have convicted and passed sentence upon them.—Under these circumstances as none of the forms required by Law, for conducting trials before a Court of Circuit, viz. the arraignment of the prisoner, the recording of his plea, and the receiving the evidence viva voce, both for the prosecution and

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defence, had been gone into by the Officiating Session Judge, the Court declared the sentence passed by him upon the prisoners severally under date 20th April last, to be illegal, and accordingly annulled the whole of the proceedings held before him in these cases, and ordered that the Session Judge be instructed to direct his Senior Assistant detached at Rutnagiree to have the case duly prepared for the ensuing Session by committing the prisoners for trial and attendance to all other forms required by Section VI Regulation III of 1830.

The Judges of the Sudder Foujdaree Adawlut further taking into consideration, that Regulation III of 1830 had abolished the ordinary Courts for the administration of justice, and substituted others vested with their powers and functions, and as this said enactment had only recently come into operation and as much doubt and confusion seemed to exist in regard to the mode of procedure for conducting trials before such newly organized Courts, deemed it expedient to publish an Interpretation on Chapter III. Section XVI. to XXIV. Regulation XIII of 1827, and declared "that trials before the Session Judge were in all cases to be conducted according to the forms laid down for the Court of Circuit in this chapter, and not those hitherto pursued by them as Criminal Judges."

On the new trial ordered, the same sentences were passed, which were confirmed by the Sudder Foujdaree Adawlut, reckoning the period from the date of original sentences, namely, the 20th of April 1830.

GOVERNMENT.

v.

LUKKRIA WULLUD JAKKOJEE, BHEEL.

Charge,—*Highway Robbery.*

1831
8th February.

LUKKRIA WULLUD JAKKOJEE BHEEL'S case.

This prisoner was tried for Highway Robbery before the Session Judge of Ahmednuggur, on the 1st day of October 1830.—Plea, guilty.

The fact of the prisoner, having in concert with another, committed a highway robbery upon two persons near the village of Ambhoree, Zillah Ahmednuggur, and taken from them cash &c. valued at Rupees 187-2, on the evening of Monday the 26th February 1828, was fully proved. It was also shewn, that both offenders were apprehended in March 1828, when much of the property was recovered, and both confessed their guilt; that while on their road to Ahmednuggur for trial both escaped from custody; and that the prisoner Lukkria was apprehended again and taken before the Koomavisdar in August 1829, when he again confessed his guilt, but qualified it by urging, that on his former apprehension, he had been beaten and maltreated, and that his confession was extorted: —to this latter confession he adhered before the Magistrate, and the Session Court, and it was admitted by two witnesses for the prosecution, when examined by the Session Judge, that force had been used in obtaining the prisoner's first confession.

When a Session Judge meets with a case, which from doubt in the application of the Law or other sufficient cause, he may consider expedient to be decided by the Court of Sudder Foujdaree Adawlut, it is irregular, to submit the same without recording a finding against the prisoner, and in a case where this irregularity of procedure was noticed by the Sudder Foujdaree Adawlut, the case was returned to the Session Judge to complete his record to the extent required by Regulation XIII Section XXII Clause 2, of 1827.

By the Session Court (J. Kentish.) "The Court entertains the clearest conviction of the prisoner's guilt, who fully admits the charge.—The only difficulty experienced in sentencing the prisoner, is, that on his first apprehension, eighteen months priviously to his confessing before the Koomavisdar and the Magistrate, he was subjected to maltreatment, and a confession extorted, as is proved by two witnesses.—These witnesses, before the Magistrate, related none of these particulars, but now affirm in contradiction to the rest, that such was the fact.—The first apprehension of the prisoner took place at Sawargaum in March 1828, he subsequently effected his

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LUKKRIA WULLUD JAKKOJEE BHEEL'S, case.

escape, and he was not retaken until August 1829, when he confessed before the Koomavisdar and confirmed the same before the Magistrate in December 1829. It is clear that at this time no force was used, and it therefore remains to determine, whether supposing him on apprehension to have been maltreated, that eighteen months afterwards it should have induced him from the dread of a repetition of similar treatment, to have made his subsequent confession.—The point seems one of much nicety, and the Session Judge knowing of no precedent, conceives it to be a case, which under the provision of Clause 2, Section XXII, of Regulation XIII of 1827, enables him to submit his doubts to a higher tribunal, and therefore resolves to lay these proceedings before the Sudder Foujdaree Adawlut for their final instructions."

By the Sudder Court (present, E. Ironside, G. W. Anderson, and E. H. Baillie, Puisne Judges.) "The Court upon a perusal of the Session Judge's record of this trial, finds that the case is handed up under the provision of Clause 2, Section XXII of Regulation XIII of 1827, in consequence of his entertaining legal doubts with regard to the disposal of the case.—It does not however appear, that the Session Judge has proceeded with the case to the extent required by the above quoted Section, previous to handing it up to the Sudder Foujdaree Adawlut; the Court therefore directs that the case be returned to the Session Judge with instructions to proceed with and complete the case by recording a finding against the prisoner, and thereon, if guilty by obtaining a Vyvustha from the Law Officer of the Court, and thereafter to return the proceedings for the final orders of this Court."

The Session Judge on resuming consideration of the case in obedience to the precept of the Sudder Foujdaree Adawlut, proceeded to complete the trial by pronouncing the prisoner Lukkria guilty on the evidence adduced, and on his own confession, and accordingly convicted him of Highway Robbery with force, in virtue of Clause 3, Section XXXVI of Regulation XIV of 1827, and again forwarded the case to the Sudder Foujdaree Adawlut.

The Court of Sudder Foujdaree Adawlut finally considering that the alleged ill-treatment sustained by the prisoner could have had no reasonable effect in inducing him to confess eighteen months afterwards, sentenced him to be imprisoned for five years with hard labour.

A prisoner on his trial for highway robbery made a free and voluntary confession, but urged that eighteen months previously a confession had been extorted from him by maltreatment; held by the Sudder Foujdaree Adawlut that his subsequent confession was not invalidated by the maltreatment he had sustained eighteen months previously, the prisoner was accordingly sentenced to five years imprisonment with labour.

JANKEE,

v.

MAHADOO BIN KASSEEBA.

Charge,—*Attempt to Murder.*

1831
3rd March.

MAHADOO BIN KASSEEBA'S case.

The prisoner was tried before the Session Judge of Dharwar, (J. Nisbet,) on an indictment charging him with having about noon on the 7th day of October 1830, wounded with a bill-hook one Jankee, with intent to kill and murder her.

In this case it was held by the Sudder Foujdaree Adawlut, that Clause I, Section VII of Regulation XIV of 1827, did not confer upon the trying authority the power of commuting a sentence of death to imprisonment for life, such power being reserved for the superior tribunal before which the case must come for confirmation.

The evidence recorded at the trial in this case proved that there had existed an intimacy between the prosecutrix and the prisoner for a long time, but that latterly the prosecutrix had become attached to one Pandoo, and disregarded the attentions of the prisoner, who was much incensed at this neglect.—On the evening of the 6th of October the prosecutrix in company with Myhnee, went to the house of Pandoo, who lived in a neighbouring village, where they remained all night, the next morning as they were returning home to Kulkoondee, the prisoner met them, touched upon the subject of Jankee's faithlessness and then seizing Jankee and her companion threatened to cut both their throats. Myhnee managed to escape, but the prisoner still retaining hold of Jankee, inflicted six wounds on her head and person with a bill hook, he had with him, and then left her lying on the ground for dead, where she was subsequently found and carried home. It was not until three months afterwards that Jankee was sufficiently recovered to attend at the trial, when the Civil Surgeon

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MAHADOO BIN KASSEEBA'S case.

deposed, that she had in consequence of her wounds, lost the use of both hands, and was otherwise seriously injured.

The Session Judge found the prisoner guilty of a malicious attempt to murder Jankeé in a fit of passion excited by jealousy, and considered, that under Clause 2nd, Section I. of Regulation XIV of 1827, the prisoner had forfeited his life to the laws, but leaning to the side of mercy, and availing himself of Clause 1st, Section VII of Regulation XIV of 1827, he sentenced the prisoner to be imprisoned and kept to hard labour for the term of his natural life, subject to the final decision of the superior Court.

The Court of Sudder Foujdaree Adawlut (G. W. Anderson, T. Barnard, and E. H. Baillie,) having weighed the evidence adduced in this case concurred in the conviction recorded against the prisoner, and confirmed the sentence of imprisonment for life with hard labour passed by the Session Judge: but in doing so, the Judges remarked, that the view taken by the Session Judge, with regard to the power of commutation declared in Clause 1st, Section VII. of Regulation XIV of 1827, was erroneous, the exercise of that power not being thereby conferred upon the trying authority in the first instance, but reserved for the superior tribunal on the case being referred for its final decision.

MURTAMA AND GOPALJEE.

v.

NAGANA WARDUN,

Charge,—*Serious Assault.*

1831
7th March.

NAGANA WARDUN'S case.

The prisoner in a fit of rage against a person who had committed adultery with his wife, assaulted and wounded two innocent persons mistaking each of them successively,

This trial came on before the Session Judge of Dharwar, on the 27th day of November 1830.

It appeared from the evidence, that one Tookia had been carrying on a criminal intercourse with the prisoner's wife, which at last became so frequent and detrimental to his domestic happiness, that he in a fit of rage, about midnight on the 1st of February 1830, taking his sword, went to the village

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NAGANA WARDUN'S case.

threshingfloor near to his own house in Mozhej Hoolcope, where he supposed the said Tookia to be asleep, and there mistaking the prosecutor Gopaljee for Tookia, assaulted and wounded him severely on his hands, but upon Gopaljee declaring who he was, the prisoner turned upon Murtama, who was lying close to Gopaljee, and making sure that he had at last found the object of his vengeance, he inflicted in rapid succession eleven wounds on his body, (one of which took off his right arm,) and then made his escape.—The prisoner on his trial admitted these facts.

for the person of the adulterer, and being convicted, was sentenced on account of the aggravated nature of the case to fourteen years imprisonment.

The Session Judge (J. Nisbet) convicted the prisoner on his own confession of a serious assault, in having severely wounded one Gopaljee, and severely maimed one Murtama, with a sword, mistaking each of them successively for one Tookia, whom he designed so to harm, injure, and wound.—The Session Judge considering the serious nature of the assault, and the injury which one of the complainants, Murtama, had sustained, by which he had lost his right arm and been deprived of the use of his left hand, sentenced him by virtue of Clause 1st, Section XXIX Regulation XIV of 1827, to be imprisoned and kept to hard labour for a term of ten years, and to pay a fine of Rupees 100 commutable in default to four years further imprisonment. The amount of fine if realized to be given to the complainant Murtama.

The Court of Sudder Foujdaree Adawlut (present, G. W. Anderson and T. Barnard,) on a careful perusal of the proceedings concurred in the conviction, and confirmed the sentence passed against the prisoner by the Session Judge.

GUNGIA WULLUD BUSSIAH.

v.

HOWLIAH BIN PURSAPA,

Charge,—*Murder*.

1831
3rd October.

HOWLIAH BIN PURSAPA'S case.

In this case, the prisoner was convicted of Murder, by the Session Judge, and sentenced to transportation for life, on evidence shewing no premeditation, but that the deed was the result of passion on sudden provocation, held by the Sudder Foujdaree Adawlut that the prisoner was only guilty of Culpable Homicide, and sentence reduced to ten years imprisonment with hard labour.

The prisoner was indicted for the murder of one Roodra, and tried before the Session Judge of Dharwar.

A quarrel of old standing had existed between the prisoner and the deceased's family, caused by the prisoner having ravished the wife of Gungia, the prosecutor, who was the deceased's brother; but although the parties had never been perfectly reconciled, there was no reason to suppose that the prisoner had any design or intention to murder either the deceased or his brother the prosecutor. Thus matters stood for five months, when about 6 P. M. on the evening of the 19th of December 1830, Roodra, the deceased, and the prisoner returning home from their fields, accidentally met at the gate of their village Pursulgie; Roodra on seeing the prisoner coughed at him in a contemptuous manner, and upon this provocation the prisoner drew his sword, inflicted a severe wound on the calf of Roodra's right leg, and then made good his escape.—Roodra was picked up, carried home, and expired in great pain the following morning. The wound as described by the members of the Inquest was on the fleshy part of the right calf, the sinews were cut, the bone exposed, and the wound gaped open very wide. It was also shewn in evidence that an ignorant person had attempted to doctor the wound, and instead of sewing it up, had kept it open, and by the application of inflammatory medicines had so irritated the wound that mortification ensued, which was the immediate cause of death.

The prisoner admitted inflicting the wound, but added, that his anger had been excited by the deceased on meeting him coughing at him in a scoffing manner.

The Session Judge (J. Nisbet,) was of opinion, that the prisoner from the evidence was guilty of murder, and that his malicious intention was proved from the dangerous nature of

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HOWLIAH BIN PURSAPA'S case.

the weapon used, although he considered the result might have been very different had the deceased's wound been sewn up and properly treated, yet nevertheless this could not effect the guilt or innocence of the prisoner at the bar, because the ill-treatment was consequent upon the wound. It also appeared, that there was every reason to believe that the prisoner had grievously offended the wife of the deceased's brother, and upon due consideration of all the circumstances connected with this case, the Session Judge felt it incumbent upon him, to sentence the prisoner, Howlia bin Pursapa, to be transported for the term of his natural life, subject to the final decision of the Sudder Foujdaree Adawlut.

Vide Interpretation of 15th January 1829.

Regulation XIV Section XXVII of 1827.

The Sudder Court (present T. Barnard and E. H. Baillie) held that the offence of which the prisoner had been proved guilty was culpable Homicide and not murder, and therefore passed a sentence applicable to the former offence, viz. that of ten years imprisonment with hard labour.

GOVERRNMENT,

v.

MOOSABHAEE WULLUD ESSABHAEE.

Charge,—*Perjury.*

1831
17th October.

MOOSABHAEE WULLUD ESSABHAEE'S case.

This prisoner was placed at the bar of the Zillah Court of Ahmednuggur on the 8th day of August 1831, charged with wilful and corrupt perjury.—Plea, not guilty.

The prisoner was charged with perjury in making two different and contradictory depositions, the one before the Magistrate and the other before Session Judge. Proof was given that the former was true, and the latter wilfully false, and that the

It was proved, that one Sulliman was brought before the Assistant Magistrate of Ahmednuggur, G. Coles Esquire, upon an indictment for robbing the shop of Kalloram Marwadee, of Rupees 700 in cash, and that on the investigation into that indictment on the 23rd of June 1830, before the said Assistant Magistrate, the prisoner being sworn as a witness, deposed "that about a month after the robbery in question, he

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MOOSABHAEE WULLUD ESSABHABE'S case.

matter of the true deposition was material to the conviction of an offender for robbery; and thereon the prisoner was sentenced to be publicly disgraced and to be imprisoned for three years with labor.

was present with three others, at the house of Mahomedjee Khoja, when the aforesaid Sulliman was told, that he was suspected of being concerned in the robbery, and that a marked rupee had been traced to him, that the said Sulliman did on this occasion voluntarily confess having committed the robbery; that he did admit having deposited rupees four hundred and twenty-five of the stolen money in the hands of Mohomed Bhaee; that Mohomed Bhaee did produce rupees fifty of that amount, and stated that the rest had been expended; and that the said Sulliman did of his own accord offer to enter into a bond for rupees seven hundred payable to the party robbed, to compromise the matter, that stamped paper was accordingly brought, the bond drawn out, and signed by Sulliman." It was further proved, that on the trial of Sulliman at the Sessions for robbery on the 2nd of November 1830, the above deposition became and was material, and that upon the prisoner being again duly sworn he deposed "that Sulliman on the occasion in question never confessed, but denied being concerned in the robbery; that he was taken into a room beaten and ill used, that in coming out of that room he still protested his innocence, and said, a confession had been extorted from him by violence; that he never admitted having deposited rupees four hundred and twenty-five with Mohomed Bhaee, and that Mohomed Bhaee, never produced rupees fifty but declared he had not a cowrie belonging to Sulliman; and that Sulliman was compelled by threats of a criminal prosecution to sign the bond for rupees seven hundred. Strong corroborative evidence was also brought forward to shew that the former of these depositions, was true, and the latter wilfully false, and given by the prisoner while in his sound senses.

The prisoner on being called on for his defence, admitted that his deposition before the Assistant Magistrate was the truth, but urged that he was intoxicated with bang, when he was sworn at the Sessions and did not know to what he was deposing.

The Session Judge (J. Kentish) held that it was clearly proved that the prisoner's deposition before the Assistant

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MOOSABHAEE, WULLUD ESSABAAEE'S case.

Magistrate was true, and that that given by the prisoner at the Sessions was false, facts not disputed even by the prisoner himself, the only excuse pleaded was, that the latter deposition was taken when he was in a state of intoxication, an assertion which was fully disproved in evidence, and the deposition itself from its clearness and precision, bore internal proof of design and connivance, which at once showed that no individual not in the full possession of his senses could have related the particulars so fully and plainly as therein set-forth. The Session Judge on these grounds found the prisoner guilty of perjury as defined in Clause I, Section XVI, Regulation XIV of 1827, in having on oath made a wilfully false deposition on the 2nd day of November 1830 before the Session Court of Ahmednuggur, in a criminal trial then pending with the corrupt intention of preventing by such means the conviction of one Sulliman on a charge of robbery and thus to defeat the ends of public justice.—The prisoner was then sentenced to be publicly disgraced in the town of Ahmednuggur and thereafter to be imprisoned and kept to hard labor for the space of five years, subject to the final orders of the Sudder Foujdaree Adawlut.

The Court (E. Ironside, *Senior Puisne Judge.* T. Barnard, *Acting Puisne Judge,* and E. H. Baillie, *Puisne Judge,*) fully concurring in the finding recorded by the Session Judge confirmed the conviction but adverting to all the circumstances in the case, which did not appear to the Court to be of a very aggravated nature, the sentence was reduced to public disgrace and imprisonment with hard labor for the term of three years.

GOVERNMENT.

v.

DOWLUTTA WULLUD BAPPOO, and others.

1831
26th December.

The case of DOWLUTTA WULLUD BAPPOO, and 18 others.

Charge,—*Escape from Custody.*

The prisoners were charged with escape from custody on the afternoon of the 27th day of November 1830 and pleaded guilty before the Session Judge of Ahmednugger on the 19th day of August 1831.

The depositions fully established that the prisoners, who were all convicts in the Ahmednuggur jail undergoing various periods of imprisonment, escaped from the party who were placed as a guard over them, while at work on the roads in the vicinity of Ahmednuggur, and that they were subsequently apprehended again, on which occasion they made resistance, whereby Godajee a Peon, was wounded, and others injured and hurt.

In a case where certain prisoners were sentenced to a longer continuous term of imprisonment than fourteen years, not in commutation for a sentence of death, such sentences were ruled by the Sudder Foujdaree Adawlut to be illegal, as Clause I, Section VII of Regulation XIV of 1827, declared that imprisonment shall not be adjudged for a longer period than fourteen years, except that ordinary imprisonment for life may be substituted as a commutation for a sentence of death.

The Session Judge (J. Kentish) found the prisoners severally guilty of the charge preferred, and sentenced them under the provisions of Regulation XIV, Section XXIV of 1827, and Regulation V, Section I of 1831, to the following terms of imprisonment respectively.

Names.	*Terms of former Sentence.*	*Sentence in this case.*
1. Dowlutta.....	14 Years..	1 year.
2. Rama Wullud Sewa ..	7 ,, ...	2 years.
3. Soobhannah.....	14 ,, ...	2 ,,
4. Sabania	3 ,, ...	2 ,,
5. Rama Wullud Ranoo..	6 ,, ...	2 ,,
6. Condajee.....	7 ,, ...	2 ,,
7. Amroota....	14 ,, ...	2 ,,
8. Vittoo.....	4 ,, ...	2 ,,
9. Kasseeba.....	3 ,, ...	2 ,,
10. Tattoo.....	7 ,, ...	1 year.
11. Kalloo..... ..	7 ,, ...	2 years.

Names.	Terms of former Sentence.	Sentence in this case.
12. Shewram	7 years	2 years.
13. Yessoo	4 ,, ...	2 ,,
14. Hurree	7 ,, ...	2 ,,
15. Rama Wullud Hannumunta	10 ,, ...	2 ,,
16. Govind	7 ,, ...	2 ,,
17. Hannumunta	10 ,, ...	2 ,,
18. Ballajee	10 ,, ...	2 ,,
19. Luxuman	14 ,, ...	1 year.

1831

The case of DOWLUTTA WULLUD BAPPOO, and 18 others.

On the case coming before the Court of Sudder Foujdaree Adawlut, (T. Barnard and E. H. Baillie,) the following resolution was recorded: "The Court having considered the whole of the proceedings and evidence in this case, concurs in the conviction recorded against the prisoners, and applying the provisions of Regulation XIV. of 1827, confirms the sentences passed upon them, with the exception of those against Dowlutta, Soobhannah, Amroota, and Luxuman, upon whom, they being already under sentence of imprisonment for the term of fourteen years, a longer continuous imprisonment cannot, under the provisions of Clause I. Section VII. Regulation XIV. of 1827, be adjudged. The sentence of two years' imprisonment against Soobhannah and Amroota, as also of one year's imprisonment against Dowlutta and Luxuman, is therefore annulled, and it is directed that they be severally discharged after having suffered the punishment adjudged in the former sentence passed upon them."*

* In re Toolajee bin Wittojee and nine others charged with Gang Robbery, it was held by the Sudder Foujdaree Adawlut, (present E. Ironside, and E. H. Baillie, Puisne Judges,) that a sentence of imprisonment for life, not in commutation of a sentence of death, was illegal; such sentence not coming within the provision of Section III. Regulation XIV. of 1827, whereby it is declared that imprisonment shall be in conformity to Section VII. of that Regulation, which only admits of imprisonment for a term of fourteen years.—The Court accordingly mitigated the sentence to that extent.

NOTE.—Act XIV. of 1844 directs, that whenever the Sudder Foujdaree Adawlut shall sentence any offender to imprisonment for life, it shall at the same time sentence such offender to transportation for life.

1832
10th September.

The case of YEMAJEE BIN SUDDASHEO, and three others.

The prisoners in this case were the first tried for aiding at a Suttee, after the passing of Regulation XVI. of 1830. On the trial, the prisoners set up a defence of ignorance of the Law, and proved that owing to the negligence of the Mamlutdar of Chickodee, (in which district the offence was committed,) Regulation XVI. of 1830 had never been duly promulgated. On these grounds, the prisoners were recommended by the Sudder Foujdaree Adawlut to Government for pardon, but Government under all the circumstances of the case withheld its sanction to the pardon recommended.

THE CASE

of

YEMAJEE BIN SUDDASHEO; and three others.

Charge—*Culpable Homicide, in aiding and abetting at a Suttee.**

The prisoners Yemajee, Lingopunt, Shreepadapa-bhut, and Babajee, Brahmins, were placed at the bar of the Court of the Assistant Session Judge of Dharwar, charged with Culpable Homicide, in having, about 10 A. M. on Sunday the 18th day of September 1831, aided and abetted at a Suttee, on the occasion of one Parwuttee-baee burning herself on a funeral pile with the corpse of her husband, Suddasheo-row, in the village of Madehall, Talooka Chickodee, Zillah Dharwar; the prisoner Yemajee, by having set fire to the funeral pile, and the other prisoners, by having otherwise assisted at the ceremony attendant on this act of self-immolation.—Plea, not guilty.

The evidence clearly proved, that Parwuttee-baee had repeatedly resolved during her husband's protracted illness to become a Suttee on his death, and that her intention to be so was notorious; that the prisoners and her other relations vehemently urged her to refrain therefrom, but without avail.—The Mamlutdar of Chickodee, whose Kucheree was only ten miles distant from Madehall, admitted that he received intelligence of Parwuttee-baee's intention the day before the Suttee took place, and that in consequence he sent five Shetsundee Peons to Madehall with verbal instructions to prevent its occurrence. The Peons stated that they arrived at Madehall on the

* In accordance with the determination of the Governor General, Lord William Bentinck, to abolish Suttees throughout British India, Reg. XVI. of 1830 was enacted by the Right Hon'ble the Governor in Council of Bombay on the 29th day of May, A. D. 1830, whereby so much of Cl. 2, Sec. XXVI. Regulation XIV. of 1827, as exempts persons assisting at rites of self-immolation from the penalty of Murder was rescinded; and it was enacted, that any person or persons assisting at any rite of self-immolation, who may use force or violence, shall be held to have committed or aided in the commission of Murder, and be liable to the punishment assigned thereto; and that any person or persons who shall assist at any rite of self-immolation without using force or violence, shall be held guilty of Culpable Homicide, and punished in the manner prescribed for that offence.

1832

The case of YEMAJEE BIN SUDDASHEO, and three others.

evening of the 17th of September; that they proceeded to the house of Suddasheo-row, who was dying; that they told the prisoners and others they had orders from the Mamlutdar of Chickodee to prevent the Suttee taking place, but as they had no written order to produce, these persons pushed and turned them out of the house; that they slept in the Chowkee of Madehall that night, and finding they had no power, they returned home next morning at day-break, and made their report to the Mamlutdar.—It was evident from the depositions of these Peons, that instead of exerting their utmost to prevent, they rather favored, the rite that was about to take place.—Shortly after the departure of the Peons, Parwuttee-baee mounted the funeral pile of her deceased husband: the prisoner Yemajee, as the eldest son of the deceased, set fire to it; Lingo-punt, a younger son, and Babajee, a nephew, took a prominent part in the ceremony, and Shreepadapa-bhut read the Muntras on the occasion, and the act of self-immolation was then completed.

It was also proved by a Carkoon belonging to the 1st Assistant Magistrate's office, from a book which he produced called "Purwana Ferist," or a book for the entry of orders, that Regulation XVI. of 1830,* which was the Regulation prohibiting Suttees, was forwarded to the Mamlutdar of Chickodee on the 31st of August 1831, and from another entry, that he acknowledged the receipt of the same on the 8th of September of that year, that is, ten days before the Suttee in question took place.

The prisoners set up a defence, that they were ignorant of the Law which prohibited Suttees; that, had they been aware of it, they would not have offended against its provisions; that the Peons from Chickodee neither produced an order, nor specifically stated that they were sent to prevent the Suttee, and that they were never pushed out of Suddasheo's house. On these points they called several witnesses, who confirmed their statements.

* Vide Court's Circular Orders Nos. 48 and 49 of the printed collection issued to all Session Judges and Magistrates on the introduction of this Regulation, and containing explicit instructions for the guidance of such officers in reference to the prevention and punishment of the crime of self-immolation.

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The case of YEMAJEE BIN SUDDASHEO, and three others.

The Assistant Session Judge (P. W. LeGeyt) recorded his finding in the following terms:—"The prisoners have clearly been guilty of the crime they were charged with; and that the Law existed prohibitory of Suttees at the date of its taking place, is equally clear. The defence urged by the prisoners of their ignorance of it, does not render their act the less a breach of the established Law of the Land, and they have incurred the full penalties assigned to the crime of Culpable Homicide. The negligence and apathy of the Mamlutdar is highly reprehensible; and there is every reason to believe, that, had he taken the most common measure to prevent the Suttee, either by writing, or going himself to the spot, the people would have quietly submitted to the order of Government. The Court does not think that any aggravation of guilt is proved by the treatment of the Shetsundee Peons. They produced no order, and by their own shewing refused to tell their names, and were only desired to depart as intruders. As there is no evidence to prove that the prisoners were aware of the Law, viz. of Regulation XVI. of 1830, the Court will not fail to bring their case to the notice of the Sudder Foujdaree Adawlut, but has in the meantime to perform the duty of pronouncing a sentence on the prisoners, commensurate with the offence of which they have been convicted. Accordingly the prisoner Yemajee, the principal actor in the affair, is sentenced to pay a fine of Rupees 1,000, or be imprisoned for three years; and, the other prisoners, Rupees 500 each, or be imprisoned for two years."

The Acting Session Judge, in his letter handing up this case for the consideration of the Superior Court, supported his Assistant's recommendation for mercy.

The Court of Sudder Foujdaree Adawlut (E. Ironside, E. H. Baillie, and J. Henderson) was of opinion, that the case should be laid before Government, with a recommendation that the prisoners be pardoned, agreeably to the representations of the Acting Session Judge and the Assistant Session Judge, and that the Mamlutdar of Chickodee be censured in the strongest terms, and directed the Registrar to communicate this resolution to Government.

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The case of YEMAJEE BIN SUDDASHEO, and three others.

In reply, the following letter from the Chief Secretary to Government was addressed to the Court.

To

JAMES SUTHERLAND, ESQUIRE,

&c. &c.

Judges of the Court of Sudder Foujdaree Adawlut.

GENTLEMEN,

I am directed to acknowledge the receipt of your Registrar's letter of the 24th ultimo, forwarding the proceedings of the Assistant Session Judge at Dharwar on the trial of Yemajee bin Suddasheo, and others, convicted of Culpable Homicide in assisting at a Suttee, and sentenced Yemajee to a fine of (1000) one thousand Rupees, or three years' imprisonment, and the others to fines of (500) five hundred Rupees each, or two years' imprisonment; and recommending that the prisoners may be pardoned on the ground of their ignorance of the Law, and that the Amildar, who had not published the Regulation, be censured in the strongest terms.

The Right Honorable the Governor in Council has directed me to inform you, that in his opinion, it is a dangerous doctrine, that ignorance of the Law is any excuse for the violation of it; and, in this particular case, if Government shall admit as an extenuation of the guilt of the prisoners, that they were not aware of the Regulation, His Lordship in Council does not see (the precedent having been once recorded) how Government can, in a similar case, hereafter refuse to extend the same indulgence to the accomplices of what the Regulation calls Culpable Homicide, but which must be called by its true name, Murder, in which light it will, it is to be trusted, in time be viewed by the Natives of this country.

His Lordship in Council cannot understand, how it happened, that a Law passed in May 1830 was neither promulgated nor known in the Zillah of Dharwar in September 1831; —a Law, too, which must have attracted the attention of the Natives of this country, as affecting, as it was supposed to affect, so intimately their religious prejudices. That Government must have been much mistaken in this particular is

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The case of YEMAJEE BIN SUDDASHEO, and three others.

quite evident, if the assertion of the prisoners is to be credited, for, had any feelings existed on the subject of a Law making it penal in any person assisting at a Suttee, the religious excitement produced in any one Zillah would have spread with rapidity through every district in the Presidency, and the records of Government would have been long since loaded with petitions on the subject of it; still, as it is believed,—that not only a silent acquiescence has been given, but, until the late occurrence at Dharwar, a ready obedience paid to it, His Lordship in Council cannot pass over this, the first, as he sincerely hopes it will prove the last, violation of it.

It appears from the evidence, that the intention of Parwuttee-baee to perform Suttee was well known throughout the country for two months before the crime was committed, and that her husband at the time of his death had been seriously ill for at least eight days. Her intended immolation therefore must have been notorious. Disbelieving, as Government does, the pretended ignorance of the Law on the part of the accomplices, as well as the assertion of the Mamlutdar, that he could not remember when he received Regulation XVI. of 1830, His Lordship in Council is clearly of opinion, that they should all suffer the punishment awarded to them, and considers the sentence on the prisoners a very mild one, for the Regulation authorizes an imprisonment to the extent of ten years, combined with a fine. Government cannot therefore remit any part of the sentence of the Assistant Session Judge.

His Lordship in Council directs, that the Mamlutdar, who owns that he had the Regulations, be dismissed from the service, as well as the five Peons who were sent to prevent the Suttee; and that the former, who may be looked upon almost as an accessary to the crime, which he certainly might have prevented, be on no account again employed by Government in any situation. The Assistant Session Judge states, that the prejudices of the Peons were probably in favor of the rite, and His Lordship in Council cannot agree with them that they were unconscious of the degree of culpability lately assigned to the act. They deserve no consideration whatever from Government.

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The case of YEMAJEE BIN SUDDASHEO, and three others.

You will be pleased to send a circular to all the Judges and Magistrates, informing them of these persons having been dismissed from the service of Government, and directing them to inform their several Native Establishments of the cause of their dismissal.

His Lordship in Council deeply regrets the occurrence of this Suttee: and, as it has been asserted that the law passed in May 1830 was not known in the Zillah of Dharwar in September 1831, requests you will take care that due publicity be given to it without delay in every Zillah within this Presidency, in order that no such excuse in future may be made for the commission of this atrocious crime.

(Signed) JOHN BAX,
Secretary to Govt.

Bombay Castle, 17th August 1832.

The Court accordingly communicated the above resolution to the Acting Session Judge of Dharwar, directing his attention to the several instructions therein contained. The Court further resolved to issue, for the general information of all Session Judges and Magistrates, the annexed Circular Orders * in connection with this case.

The prisoners in this case were subsequently pardoned at the request of the Governor General of India, Lord William Bentinck.

* To,

THE SESSION JUDGES.

GENTLEMEN,

It having been brought to the notice of the Sudder Foujdaree Adawlut, that prisoners on their trial have set up in their defence a plea like that of ignorance, or a want of due promulgation of the Regulations, and attempts having been made, and particularly in the course of some late trials for Suttee in the Zillah of Dharwar, to defeat the ends of Justice, by taking advantage of the difficulty of proving, either in respect to time or form, the latter circumstance; I am directed to enjoin upon you, with a view of removing, for the future, any just pretext of this nature, the practice of giving, by every practicable method, immediate publicity to Regulations, upon their arrival at your Zillah.

(Signed) H. YOUNG,
Acting Registrar.

Bombay, Sudder Foujdaree Adawlut,
11th September 1832.

[To,

THE CASE

of

MARIANE PEPIN AND ANNA FRANCISCA, *alias* AWABAEE.

1833
22nd April.

The case of MARIANE PEPIN, and another.

In this case a girl of fifteen years of age, born of a Portuguese mistress kept by a Parsee, was about to marry a Parsee, with the consent of her parents, when a Roman Catholic Priest petitioned the Session Judge to prevent the marriage, and claimed the guardianship of the girl, until she arrived at a more mature age, on the grounds of the girl having been baptized. It was held by the Sudder Foujdaree Adawlut, with the advice of the Advocate General, that the girl having attained womanhood was entitled to marry whom she pleased, and that she should also be allowed to reside with her parents if she wished so to do.

This case was brought before the Session Judge of Surat, on the 9th day of January 1833.

The facts were simply these:—Mariane Pepin, by birth a Portuguese of the Roman Catholic Faith, having been kept for thirty years by one Merwanjee Shapoorjee, a Parsee, as his mistress, had issue by him two daughters. These children had lived with their parents from their birth, and had been brought up as Parsees. On the elder daughter attaining the age of fifteen years, she was about to be married, with the consent of her parents, to a Parsee in Surat, when the Rev. Miguel Antonio, a Roman Catholic Priest of that City, came forward and petitioned the Session Judge to prevent the marriage, alleging in his petition that, at the request of both father and mother, the two children had been baptized by his predecessor in the Roman Catholic Church at Surat, whereby he, as Vicar of Surat, and Francisco Major, as the surviving godfather, became responsible for the fulfilment of the promises made in behalf of the children at their baptism, and claiming the right to protect the children until they arrived at such a mature age as would

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To,

THE SESSION JUDGES AND MAGISTRATES.

GENTLEMEN,

The Right Hon'ble the Governor in Council having been pleased to dismiss from their respective situations, Bhugwuntrow, the Mamlutdar of Chikodee, in the Zillah of Dharwar, and the Peons whose names are cited in the margin, the former for culpable neglect in not giving publicity to the Suttee Regulation, and otherwise conniving at the commission of an act of Suttee; and the latter for culpable neglect of orders and connivance, as evidenced in their conduct on the occasion; and his Lordship in Council having further been pleased to declare them incapable of employment under this Government, I am directed by the Judges of the Sudder Foujdaree Adawlut, under instructions from his Lordship in Council, to acquaint you with the circumstance, and to request you will explain the cause of their dismissal to the Native Establishment under your control.

(Signed) H. YOUNG,
Acting Registrar.

Bombay, Sudder Foujdaree Adawlut,
18th September 1832.

1 Purshram Bin Bhimsing Rajpoot.
2 Khundooram Luckma.
3 Shidana Bhow Balapa.
4 Mallick Bin Sheik Bowa.
5 Naga Bin Kulsana Lingaet.

1833

The case of MARIANE PEPIN, and another.

enable them to judge for themselves on religious subjects. In proof of his allegations, the Rev. Miguel Antonio produced the baptismal registers, duly attested.

The Session Judge (W. J. Lumsden), in giving his decision, was chiefly guided by the opinion of the Advocate General in a case* regarding some Armenian Christians, which he held to be applicable to the present case. The Session Judge also held, that according to the Law of England (and indeed he believed according to general Law as laid down in Blackstone and Montesquieu) the mother of an illegitimate child was its natural guardian, and that consequently the Parsee father had no right to draw the children into his community from that of the Roman Catholics into which they had been baptized, and he therefore directed the two children to be placed under the protection of the Roman Catholic Priest and the surviving sponsor.

Against this decision Mariane Pepin and her eldest daugh-

* In this case, an Armenian Christian at his death left a widow and three children, all of them Christians, and baptized agreeably to the forms of the Armenian Church. After his death, his widow thought fit to marry a Mahomedan, and embrace his religion, and wished subsequently to make her children, who were all under age, Mahomedans. To resist the alienation of the children from their faith, the godfathers came forward and claimed the guardiansbip of the children, in right of the sacred promises made by them as sponsors, to cause the children to be brought up as Christians. The Advocate General's opinion on the case was as follows:

"I am of opinion, that the mother of these children, looking at what she has done, must be considered precisely in the same light as if she had died or had left the country, leaving her children behind her, and that the Surat Judge cannot have the smallest difficulty in dealing with these children as if they were orphan children, and appointing them proper guardians accordingly.

"I have not looked at this case as a question of the spiritual interests of the children. It is quite enough to say that their mother has thought fit to enter into another society, and that there is nothing in her character of mother authorizing her to take her children along with her into it, and that therefore her other relations have to interpose, and require that they shall continue in the same society in which their father lived and died, till old enough to judge for themselves, for there is no doubt but that in the case of these Armenian Christians the religion and whole social state are inseparably connected.

(Signed) JOHN MILL,
Acting Advocate General."

1833

The case of MARIANE PEPIN, and another.

ter Anna Francisca, alias Awabaee, petitioned the Sudder Foujdaree Adawlut, whereupon the Court (present E. H. Baillie, J. Henderson, and D. Greenhill) resolved to lay the whole of the papers before Government, with a request that the opinion of the Advocate General be taken, &c. In reply to this communication the Secretary to Government forwarded to the Court the subjoined opinion of the Advocate General.

" In this case a predecessor of the original petitioner, a great many years ago, baptized two illegitimate children (one of whom has grown up to womanhood, and the other is in her 12th year), and upon this circumstance the applicant founded a claim of right to the custody of the persons of these children. What right of guardianship can the circumstance of having baptized a child give, even to the person who did so, or becoming a sponsor to a child give to the person who became so? Had such right been conferred, it is surely rather late in the day to attempt to enforce it for the first time at the end of fourteen years. What is the clerical applicant's 'locus standi' in his petition to the Session Judge?

" In the case of the Armenians, which seems entirely to have misled the Session Judge, the children were of tender years, legitimate children, and therefore inheriting their father's name and character. The mother, after the father's death, thought fit to marry a Mahomedan, and embrace his religion. She was of course mistress of her own actions, but as to the children, I was of opinion, as every one must have been, I think, that she ought not to be allowed to drag them with her into the seraglio, but that they should remain with the friends and relations with whom they had hitherto been brought up. The application, as I understood it, was on the part of their paternal relations, and was a request on their part that the mother should let her children alone.

"In the present case, the two children are illegitimate children, (according to English law, *filiæ nullius*,) having no relations, but having of course natural parents, with whom, as far as appears, they have always lived, and by agreement between whom they have been brought up as Parsee children.

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The case of MARIANE PEPIN, and another.

"The Session Judge observes, 'that according to the Law of England, and indeed it is believed, to general Law, the mother of an illegitimate child is its natural guardian: the Parsee father therefore has no claim to draw the children into his society from that of the Roman Catholics, into which they have been baptized.'

"That the mother of an illegitimate infant is entitled to the custody of that infant in preference to the father, has been decided more than once in the English Courts; but there is no question in this case as between the father and mother; they are both agreed as to what they wish to be done with their children. And as to the circumstance of their having had the children baptized by a Roman Catholic Priest, and having afterwards brought them up as Parsees, I see nothing in that, but an irregularity both of purpose and principle, that might well have been expected, considering who the parents are; but upon no principle of Law that I am acquainted with, can such an effect be attributed to that act as the Session Judge seems to suppose. The expression 'Baptized into the Society of Roman Catholics,' to me conveys no very clear meaning; I cannot therefore see the reason why these children are to be taken by the order of the Session Judge from the people under whose care they have hitherto lived, and be consigned to the custody of a person whom, for aught that appears, they never spoke to, or ever saw in their lives, the elder of the girls having arrived at womanhood, and being perfectly entitled to marry whom she pleases.

"As the Session Judge in this case has thought it necessary to interfere, I think, after what he has done, that he ought to send for these two children, and examine them apart from every one, as to where and with whom they wish to reside, and if they express a wish to return to their parents, which they no doubt will, I think he ought to return them to their hands.

(Signed) JOHN MILL,

Acting Advocate General."

1833

The case of MARIANE PEPIN, and another.

The Court (present E. H. Baillie, J. Henderson, and D. Greenhill), on resuming consideration of this case, concurred in the opinion of the Acting Advocate General, and directed a copy of the same to be furnished to the Session Judge of Surat for his information and guidance, particularly with reference to the suggestion contained in the last paragraph of Mr. Mill's letter.

The children were subsequently restored to their parents.

THE CASE

of

JEHAN KHAN WULLUD CHAND KHAN, BHEEL,

and three others.

Charge—*Gang Robbery and Murder.*

1833
19th August.

The case of JEHAN KHAN, and others.

Five prisoners having been tried and convicted on a charge of Highway Robbery perpetrated on three Wanees, two of whom they afterwards murdered under circumstances of great deliberation and cruelty, were one and all sentenced to death.

The prisoners, Jehan Khan, Pahoo, Ruckma, and Gotia, Bheels, were brought before the Court of Circuit holding a Session at Dhoolia for the Province of Khandeish on the 21st day of June 1833, charged with gang robbery on the highway, attended with murder.

The proof of this case rested principally on the testimony of the prosecutor Ramappa, who deposed, that he was travelling on business in company with Shamappa and Dewappa, Wanees, along the high road through the Chapanair jungle in Khandeish, on the 29th of January 1833; that about 3 P. M. they were stopped by six armed Bheels, who robbed them of their property, and then took them about a coss into the jungle, and there bound them to trees; the Bheels then sat down and regaled themselves until evening, when they marched them off with their hands tied behind them, by the hill path, four coss up the ghauts, to the precipitous scarp of a hill, called Koawar Khood; here the Bheels drew their swords, and on

consulting together determined, in order to prevent detection, to murder the deponent and his two companions, and throw them over the precipice, on the brink of which they were standing. The Bheels then selected the deponent for their first victim, but his hands having accidentally become loose, he rushed at one of the Bheels, and in the scuffle both fell over the precipice; the Bheel was caught by a tree, but the deponent rolled down about 300 feet to the bottom, and though severely bruised he sustained no fracture. Shortly after his fall, deponent heard the screams of his companions above, and then the noise as of two bodies falling from rock to rock into the nulla below; subsequently several stones came rolling down the face of the precipice, one of which struck the deponent on the thigh. The next morning the deponent scrambled up to the spot where he had last seen his companions, and found it covered with pools of blood; deponent then proceeded to Ambrole, and reported what had occurred to the Patell. Deponent recognized Jehan Khan, Pahoo, and Ruckma positively, but could not identify Gotia; Ruckma was the person with whom deponent grappled and fell over the precipice. The bodies of Shamappa and Dewappa were subsequently discovered in the nullah at the foot of the precipice. An Inquest was held, and a verdict of wilful murder returned against the four prisoners and others unapprehended. Several articles of the stolen property were found in the possession of the prisoners, and were identified by the prosecutor. The prisoners, on being apprehended, severally made full and detailed confessions, to which they adhered before the Magistrate and the Court of Circuit, but each charged the acts of murder against the others.

The Session Judge on Circuit (J. Kentish), considering the prisoners were guilty of a crime marked with great atrocity, sentenced them one and all to be hung by the neck, subject to the confirmation of the Superior Court.

The Court of Sudder Foujdaree Adawlut (present E. H. Baillie and D. Greenhill) fully concurring in the conviction and sentences passed on the prisoners, issued the requisite warrants for their execution.

1833

The case of JEHAN KHAN and others.

Sutwa, the head of this daring gang, was apprehended in 1836, and being brought to trial before B. Hutt, Esquire, the Session Judge, was convicted and sentenced to death, which sentence also received the confirmation of the Sudder Foujdaree Adawlut.

THE CASE
of
PULSOO BIN SHABAJEE
Charge—*Perjury.*

1833
19th August.

PULSOO BIN SHABAJEE'S case.

The prisoner Pulsoo was tried for Perjury, on the 22nd day of January 1833, before the Session Judge of Poonah.—Plea, guilty.

Although the Code of Regulations of 1827 does not explicitly require that perjured evidence shall be material to any matter in issue, yet it is desirable to state on the record, the nature of the proceedings in which the perjury was committed, and by what authority the false evidence was taken, and how far it was likely to affect the matter in issue.

The indictment merely charged the prisoner with having, on 24th of November 1832, falsely deposed on oath before the Assistant Collector of Poona, that he was not present on a particular day at the house of one Babjee Kasinath, Sheikdar, in the town of Indapoor, and that he did not hear a certain conversation, that then and there took place, regarding the rate of Revenue fixed by Government for the year 1831, and which Babjee Kasinath said had been fixed at five annas per maund.

The evidence clearly proved, that the prisoner was present on the occasion specified in the indictment, that he heard the conversation which then took place, and that he himself took a part in it. There was however nothing in the evidence to shew, that these facts were important or material to the determination of any judicial proceeding pending before a competent authority.

The Session Judge (A. Bell) convicted the prisoner of Perjury on his own confession,—in which he admitted he had been suborned to commit the offence,—and sentenced him, under all the circumstances of the case, to three years' imprisonment. Clause 2, Section XVI. Regulation XIV. of 1827.

On petition by the prisoner, the case was laid before the

1833

PULSOO BIN SHABAJEE'S case.

Court of Sudder Foujdaree Adawlut, when the Judges (present E. H. Baillie, J. Henderson, and D. Greenhill) returned the case to the Session Judge, remarking, that although the offence of Perjury, as defined in the Code of Regulations of 1827, did not explicitly require the Perjury to be material to the matter in issue, yet as it must, like all other crimes, be of different shades and degrees, and as it was evident that a perjury committed with a very injurious intent, was more deserving of punishment than a mere falsehood, so it became desirable in all perjury cases to state on the record, the nature of the proceedings in which the perjury was committed, the competence of the authority before whom the false evidence was taken, and how far it was important to a judicial proceeding.*

The Session Judge, in the supplemental record of his proceedings, having supplied the deficiencies above noticed, the Court saw no further cause to interfere, and therefore rejected the prisoner's petition.

THE CASE

of

SHEIK GHASEE WULLUD SHEIK BOOLLA.

Charge—*Murder.*

1833
16th September.

SHEIK GHASEE WULLUD SHEIK BOOLLA'S case.

In this case a rule was laid down for the disposal of prisoners convicted of criminal offences, while under the influence of insanity.

The prisoner was arraigned at the Bar of the Session Court of Ahmednuggur, on the 2nd day of June 1833, for the murder of one Sheik Lall Wullud Abdool Kureem.—Plea, not guilty.

It was proved, that the prisoner and his wife Jubbun were living in the house of his brother-in-law Sheik Lall, in the village of Nizampoor, in Khandeish, when about 1 P. M. on the 8th day of April 1833, the prisoner seizing a spear, which happened to be in a corner of the room, inflicted with it a mor-

* Vide note by the framers of the Code of 1827 on Section XVI. of Regulation XIV. regarding the definition of Perjury.

1833

SHEIK GHASEE WULLUD SHEIK BOOLLA'S case.

tal wound on the breast of his brother-in-law, Sheik Lall. No provocation was given, Sheik Lall, at the time he received the wound, being asleep on his cot. The prisoner next attacked his wife Jubbun, and had severely wounded her, when some of the neighbours, hearing her cries, came into the house and interposed. Several witnesses deposed, that the prisoner had been for many years labouring under insanity, and was always gloomy and sullen in his temper, and that he had on one occasion endeavoured to cut his own throat.

By the Session Judge (J. Kentish):—"The evidence clearly proves the existence of no malice or cause beyond that of mental imbecility and derangement, for the commission of the offence, which is clearly proved, nevertheless, to have been perpetrated by the prisoner. The Court acquits the prisoner, Sheik Ghasee Wullud Sheik Boolla, on the grounds of insanity, of the crime of wilful murder, but convicts him of having caused the death of Sheik Lall Wullud Abdool Kureem, under the influence of mental derangement. The Court, however, being of opinion, that it would be highly prejudicial and dangerous to society to allow of the release of the prisoner, issues a warrant for the prisoner's detention, until released by the orders of Government."

On review by the Sudder Foujdaree Adawlut, (present G. W. Anderson, E. H. Baillie, and D. Greenhill,) the Court held the sentence passed by the Session Judge to be informal, inasmuch as the execution thereof might involve a longer period of imprisonment than he was empowered by the Regulations to award, without the confirmation of the Sudder Foujdaree Adawlut. The Court, therefore, resolved to issue the following warrant.

Seal

To,

JOHN KENTISH, ESQUIRE,

Session Judge Ahmednuggur.

SIR,

Whereas a case was referred to the Court of Sudder Foujdaree Adawlut on the 5th of September 1833, by the Session Judge of the Zillah Ahmednuggur, holding a Session at

1833

SHEIK GHASEE WULLUD SHEIK BOOLLA'S case.

Dhoolia in the said Zillah, wherein Sheik Ghasee Wullud Sheik Boolla was charged with murder, in having on the day of the 8th of April 1833, (corresponding with Chytre wud 4 Shuke 1755,) committed murder on the body of Sheik Lall Wullud Abdool Kureem of Nizampoor, Talooka Pimpulnair, by striking him with a spear, from which wound he died on the 13th of April 1833, (corresponding with Chytre wud 6 Shuke 1755,) and has been found guilty to the extent of having committed the offence, whilst in a state of mental derangement; you are therefore required to detain the prisoner Sheik Ghasee Wullud Sheik Boolla, in safe custody until such time as he shall be declared, by competent medical authority, to be in a fit state to be set at large. You are hereby required to execute the said sentence according to the Regulations.

(Signed) G. W. ANDERSON,
E. H. BAILLIE,
D. GREENHILL. } Puisne Judges.

The Court further noticing, in repeated instances, where lunatics have been acquitted or found guilty of various offences, a great discrepancy as to the disposal of such prisoners, ordered that a copy of the above warrant be forwarded to all Session Judges for their information and guidance.*

THE CASE

of

OUSHEA WULLUD SAWIA BHEEL.

Charge—*Murder.*

1833
23rd September.

OUSHEA WD. SAWIA BHEEL'S case.

The prisoner, while in a state of intoxication, stabbed to death

The trial of the prisoner for murder came on before J. Kentish, Esq., holding a half yearly Session at Dhoolia, for the Province of Khandeish, on the 26th day of June 1833.—Plea, not guilty.

* Vide the Court's Circular Order No. 90, dated 22nd June 1835, also the Court's Circular No. 314, dated 11th February 1845, which directs that no medical officer is to release a criminal, sentenced as a lunatic, from the Civil Hospital on his becoming sane, but that he is to return the criminal to the authority to whom the warrant of the Sudder Foujdaree Adawlut for his custody is addressed.

1833.

OUSHEA WD. SAWIA BHEEL'S case.

a person who interfered in a dispute between his father and the prisoner. Held that the prisoner was guilty of murder, and that his plea of drunkenness was no excuse for the crime committed. Sentence, transportation for life.

Dewlea the prosecutor, his son Chundia, and a number of others, were going to a temple, on the evening of the 5th of March 1833, in order to celebrate the Hoolee festival in the village of Shada in Khandeish, when they accidentally met the prisoner, who being in a state of intoxication, used towards the prosecutor as he passed by, abusive language, which he returned, whereupon a quarrel ensued, when the prisoner drew his knife and endeavoured to stab the prosecutor, but was prevented by the interposition of Chundia. Irritated by this interference, the prisoner made another stab with his knife, and inflicted on Chundia's breast a mortal wound, of which he expired. The prisoner was thereupon seized and placed in custody. From the evidence, no previous ill-will appeared to have existed between the parties, but, on the contrary, they were proved to have been on friendly terms with each other.

The prisoner, in his defence, urged, that he was so drunk, that he knew nothing of what had occurred until the following morning.

By the Session Judge:—"The evidence most clearly proves, that the prisoner stabbed the deceased with a knife, and thereby caused his instant death. The prisoner has urged drunkenness as the only plea for the act committed, and states that owing to intoxication, he was unconscious of what occurred. It is proved that he was drunk, whilst the fact of stabbing the deceased, in consequence of the interference of the latter with the prisoner for abusing his father, shows that he could not have been altogether unconscious of what he was doing, neither can drunkenness be held as rendering the prisoner irresponsible for depriving the deceased of life.* The Session Judge, however, has to record, there was no reason to believe, that the crime was premeditated before the meeting of the parties in the street."

The Session Judge therefore found the prisoner guilty of

* With respect to a person *non compos mentis* from drunkenness, which has been termed *dementia affectata*, or acquired madness, it is a settled rule, that if the drunkenness be voluntary, it cannot excuse a man from the commission of any crime, but on the contrary must be considered as an aggravation of whatever he does amiss.—Vide Russel on Crimes, Vol. I. page 7.

1833

OUSHEA WD. SAWIA BHEEL'S case.

Murder; but before passing judgment, it having been brought to his notice, that the prisoner had been released from Jail only fifteen days, and his former warrant, wherein he was sentenced to five years' imprisonment on conviction of Rebellion, having been produced, the Session Judge determined, under all the circumstances of the case, to sentence the prisoner to transportation beyond the seas for the term of his natural life, subject to the confirmation of the superior tribunal,

The Court of Sudder Foujdaree Adawlut (present G. W. Anderson and D. Greenhill), fully concurring in the finding of the Session Judge, resolved to confirm the sentence passed upon the prisoner under the provisions of Cl. 4, Sec. XXVI. of Regulation XIV. of 1827.

THE CASE

of

MOODKA BIN MURRIBUSSAPPA.

Charge—*Murder.*

1833
30th September.

MOODKA BIN MURRIBUSSAPPA'S case.

It is irregular for a Session Judge to refer a case to a Native Law Officer, for a formal opinion on the weight of the evidence, Sec. VIII. of Reg. VIII. of 1831, merely contemplating that the Court should avail itself of the Law Officer's opinion upon an isolated point of Law or Custom. The peculiar functions of the Law Officers being to expound the Law.

This prisoner being indicted for the wilful murder of one Doorgee, a prostitute, pleaded, not guilty on his trial before the Session Judge of Dharwar, on the 17th day of August 1833.

The deceased, Doorgee, was last seen alive in company with the prisoner, at about 4 P. M. on the 23rd of July 1833, walking in the direction of the prisoner's house. Two days afterwards, the corpse of the deceased was found in a dry nullah with the scull severely fractured. Suspicion falling on the prisoner, his house was searched, and certain ornaments discovered there were proved to have been worn by the deceased when she was last seen alive. A large mark of blood was discovered on the floor of one of the rooms in the prisoner's house, and stains of blood were also found on his clothes.

The prisoner, when called on for his defence, denied having murdered the deceased, and charged its commission on one

1833

MOODKA BINMURRIBUSSAPPA'S case.

Sidda, but admitted, that the murder had taken place in his own house, and that he helped Sidda to conceal the body.

The Session Judge (J. B. Simson), on closing his proceedings, referred the case to the Shastree of the Session Court, for his opinion. That officer, in his Vyvustha, went into the evidence and merits of the case, and concluded with stating it as his opinion, that the prisoner was the murderer of the deceased, and liable by the Shastras to discretionary punishment. The Session Judge concurring in this opinion, found the prisoner guilty of wilful murder, and sentenced him to suffer death, subject to the confirmation of the Superior Court.

The Sudder Foujdaree Adawlut (present G. W. Anderson, E. H. Baillie, and D. Greenhill) recorded the following resolution:—"The Court concurs in the view taken by the Session Judge of the guilt of the prisoner, and determines to confirm the sentence passed; but considers it requisite to record its objections to the mode in which the case was referred to the Shastree for his opinion. In the opinion of the Court, Sec. VIII. of Reg. VIII. of 1831, contemplates rather the Court's availing itself of the Law Officer's opinion upon an isolated point of Law, or custom, or a particular part of the evidence, rather than a formal opinion or judgment on the guilt of the prisoner. Were such practice to prevail, the Law Officers would be made to usurp the functions of a regularly constituted Jury. The least evil would be, to confound offices that are not meant to be confounded, and which their nature points out to be distinct. Thus a Law Officer consulted upon the general merits of the evidence, and the question of the guilt of the prisoner, is not in a position duly to exercise his own peculiar functions, as an expounder of the Law. The greatest evil, however, which the Court apprehends to result from such a practice is, that it virtually divests the Judge from that peculiar weight of responsibility, which arises from his sentences being based upon his own judgment and appreciation of the evidence. When the presiding authority is able to prop up his conclusions, and fortify his opinion, by calling into his aid another officer, not immediately responsible, *in foro conscientiæ*, for the sentence that is pronounced, it is

consistent with all experience to suppose, that he becomes relieved from much of that solicitude which operates so beneficially in making him careful in establishing the grounds of his verdict."*

1833

MOODKA BIN MURRIBUSSAPPA'S case.

THE CASE

of

OOMAJEEROW BIN DONEDABAROW.

Charge—*Gang Robbery.*

1833
21st October.

OOMAJEEROW BIN DONEDABAROW'S case.

This prisoner was convicted of two gang robberies, one committed twelve, and the other five, years previously to the trial, but, having since led a reformed life, and become a peaceable cultivator of the soil, and carried a good character among his fellow villagers, he was only sentenced, by the Sudder Foujdaree Adawlut, to be imprisoned for the nominal period of one day, and to furnish security.

The prisoner was arraigned before the Joint Session Judge of Poona, on the 8th day of September 1833, on two separate charges of Gang Robbery. The first offence was committed during the month of September 1821, in the village of Nigde, in the Zillah of Poona, and the second during the month of January 1829, in the village Dhorene, within the same Zillah. —Plea, guilty.

The deposition of one of the prisoner's accomplices, and the prisoner's own confession, were read and recorded for the prosecution. This accomplice had undergone a sentence of two years' imprisonment, and on his release from Jail, being actuated by enmity, he had informed against the prisoner. It was proved, that the prisoner had quitted the Deccan, where his crimes had been committed, and had abandoned his evil habits, and become a peaceable cultivator of the soil in the Konkan, for the period of five years preceding his apprehension, and the Patell and other inhabitants of the village in which he had resided, gave him an excellent character. It was also proved, that the crimes in which the prisoner had

* The Court's Circular Order of the 10th of May 1847, points out the impropriety of ever submitting a case for the report of the Law Officers, and directs, that whenever it may be necessary to obtain the opinion of a Law Officer on any point, a clear question, setting forth every thing that may be requisite for his guidance, is all that should be referred for his exposition.

1833

MOODKA BIN MURRIBUSSAPPA'S case.

been engaged were not of an aggravated nature, and the amount of the property plundered was but small.

The Joint Session Judge, J. Warden) convicted the prisoner on his own confession of the crimes laid to his charge, but remarked, that it was twelve years since one, and five years since the other, Gang Robbery was committed; —offences which would never have been known but for the information of an accomplice. The prisoner, it morever appeared, had not only quitted the Deccan, but become a peaceable cultivator in the Konkún; and to drag him from his fields to wear out a long period of imprisonment among those whose habits he had abandoned, would only be probably to convert a quiet member of society into an irreclaimable marauder. The Joint Session Judge, therefore, under the peculiar circumstances of the case, in virtue of the provisions of Clause 2, Section XXII. Regulation XIII. of 1827, referred the case for the decision of the Sudder Foujdaree Adawlut, without passing sentence, recommending the prisoner for pardon on his furnishing security.

The Sudder Foujdaree Adawlut (present G. W. Anderson, E. H. Baillie, and D. Greenhill) recorded the following judgment:—"The Court, after a careful perusal of the proceedings in this case, concurs with the Joint Session Judge in his conviction of the prisoner, but considering the length of time which has elapsed since both of the crimes were committed, and the good character which the prisoner has since borne in the Konkun, determines to pass upon him the lightest sentence contemplated in Clause 1, Section XXXVII. Regulation XIV. of 1827, and therefore sentences him to be imprisoned in the Jail at Poona, for the period of one day, and that he furnish good security to the satisfaction of the Session Judge for his future good conduct."

THE CASE

of

LUXUMEE, WIFE OF JUGGUNAUTH.

Charge—*Murder*.

1833
2nd November.

The case of LUXUMEE, WIFE OF JUGGUNAUTH.

The prisoner, a woman of the Kamatee caste, was tried for murdering a child, under circumstances of great atrocity; and, on conviction, was sentenced to death: the Court of Sudder Foujdaree Adawlut holding, that the prisoner was not entitled to the benefit of Cl. 5, Sec. IV. of Regulation XIV. of 1827.

This prisoner was tried before the Session Judge of Ahmednuggur, on the 2nd day of October 1833, for murdering one Syajee, a boy of seven years of age, in order to rob him of his ornaments.—Plea, not guilty.

It was abundantly clear from the evidence, that the prisoner enticed the child away from his mother's house, and deliberately led him by the hand into the bazaar, where she bought some Majoom, a stupifying drug, of which she made the child partake, and then took him outside the village to an unfreqented well, where she knocked out the child's brains with a stone; robbed his person of ornaments valued at Rs. 10, and threw the corpse into the well.

The Session Judge (J. Kentish) found the prisoner guilty of the charge preferred, and considering the cool and determined manner in which the murder had been perpetrated, he sentenced her to suffer death, referring the case to the Sudder Foujdaree Adawlut for confirmation.

By the Sudder Foujdaree Adawlut:—"The Court, (present G. W. Anderson, E. H. Baillie, and D. Greenhill,) after an attentive persual of the whole of this case, does not consider that the prisoner, who has been convicted of a most cruel murder, and in which conviction the Court fully concurs, is entitled to the benefit of Cl. 5, Sec. IV. Regulation XIV. of 1827, as the murder is of such deep atrocity, that the feelings of the community could not be shocked at her suffering the utmost penalty of the Law; and therefore determines, under Cl. 4, Sec. XXVI. Regulation XIV, of 1827 to confirm the sentence of death passed upon the prisoner by the Session Judge of Ahmednuggur."

THE CASE

of

BUSSIA BIN BALUPPA.

Charge—*Murder.*

1833
2nd November.

BUSSIA BIN BALUPPA'S case.

In all criminal cases the prisoner should be asked, if he has any witnesses to call in his defence, and the question and reply should be entered on the record.

This prisoner was tried at Dharwar, on the 18th day of September 1833, for the wilful murder of one Veerbhudra, a boy of twelve years of age, whom he had strangled, in order to effect a robbery of some gold and silver ornaments.—Plea, not guilty.

The prosecutor, the father of the deceased, deposed, that on his return home, about noon on the 29th of August 1833, he missed his son, and after much fruitless search, he was informed by a woman, that she had heard the screams of a child issuing from a sugar-cane field, and that on repairing thither, he found the corpse of his son, murdered and stripped of his ornaments. Soobraya, the Patell of a neighbouring village, affirmed, that on the day of the murder, the prisoner brought some gold and silver ornaments to him, stating that a female acquaintance had requested him (the prisoner) to dispose of them, and that the prisoner left them with him for sale. These ornaments were fully identified, and proved to have been worn by the deceased on the day of the murder. The Jury, who examined the body, found several marks of violence on the corpse, but were of opinion, that the death of the deceased was caused by strangulation.

The prisoner in his defence urged, that one Appana and one Bussana committed the murder, and that he, though present, took no active part in it.

The Session Judge (J. B. Simson) recorded his finding in the following terms:—"The prisoner's admission of his participation, his admitted detailed statement of the particulars of the murder, in which he gives so fully the nature of the wounds inflicted, and in which he is so much corroborated by the inquest report, and the fact of the ornaments taken from the

deceased being left by him with the witness Soobraya, fully substantiate his guilt. Even if his assertions in regard to having associates are true, (and such, from the proceedings of the committing Magistrate, does not appear probable) his guilt remains unqualified. He has been proved guilty of the deliberate brutal murder of a boy, whom he had previously well known, without any inducement beyond obtaining his ornaments, of no great value, (Rupees 34) and without even the plea of being in any degree in want. Again, if his insinuations against Appana and Bussana are not true, he has the additional sin to atone for, of implicating in his own well deserved punishment, those who have been guiltless of any offence. The Session Judge regrets he can find no grounds for extenuation. The prisoner, throughout the trial, has behaved in a hardened, unfeeling, manner, and has expressed no anxiety beyond entailing ruin upon his alleged associates, and providing for his bodily wants, previous to his anticipated execution, by pampering his appetite with rice, molasses, milk, and ghee." The Session Judge therefore, under all the circumstances of this case, resolved to sentence the prisoner, under the provisions of Clause 4, Section XXVI. Regulation XIV. of 1827, to death, subject to the confirmation of the Superior Court.

The Court of Sudder Foujdaree Adawlut, (present G. W. Anderson, E. H. Baillie, and D. Greenhill) concurring in the conviction of the prisoner, determined to confirm the sentence of death passed upon him. The Court, however, observing, that it did not appear from the record, whether the prisoner had been asked if he had any witnesses to call in his defence, remarked to the Session Judge, that it was in all cases desirable, that a prisoner should be asked if he has witnesses to call in his defence, and that the question and reply should be entered on the record.

THE CASE

of

NAVULCHUND BIN KULLIANCHUND.

Charge—*Fraudulent appropriation of property by breach of trust.*

1834
6th January.

NAVULCHUND BIN KULLIANCHUND'S case.

The prisoner bought on credit Rupees 2,300 worth of jewels from some merchants at Poona, and then suddenly went to Surat, leaving unpaid a balance of Rupees 1,891. On apprehension, the prisoner was convicted and sentenced by the Session Judge, under Section XL. of Regulation XIV. of 1827. Held by the Sudder Fouidaree Adawlut, that the Regulation quoted was inapplicable to the offence, the jewels never having been entrusted to the charge of the prisoner, but sold to him. The prisoner was accordingly acquitted.

The prisoner was brought to trial before the Session Judge of Poona, on the 17th day of October 1833, charged as above.—Plea, not guilty.

The evidence shewed, that the prisoner came to Poona in the month of June 1833, as a Merchant Jeweller, and that through the means of four Dullals or Brokers, he commenced trading in jewels with several merchants residing in that city, buying from some, and selling to others. His purchases amounted to Rupees 2,300, of which sum the greater portion was obtained upon credit. On his departure from Poona, which was very sudden, and without notice to his creditors, there remained unpaid of the above sum, a balance of Rupees 1,891, besides brokerage due to the Dullals. The Poona merchants, on discovering that the prisoner had absconded, and imposed upon them, laid information before the Magistrate, who had the prisoner apprehended at Surat.

The prisoner, on being called on for his defence, stated, that he had purchased the jewels,—that he had paid a part of the purchase money,—and that he was willing and had always intended to pay the balance. His Counsel further urged, that the whole transaction was of a civil nature, being a common debt, and that, therefore, he was not amenable to the Criminal Court.

The Session Judge (S. Marriot) considered the transaction was marked with the character of swindling, and, upon the evidence adduced, he found the prisoner guilty of the charge laid against him, and sentenced him to be imprisoned for one year, and to pay a fine of Rupees 1,891, or, in default thereof, to be further imprisoned for a period of four years.

Sec. XL. Reg. XIV. of 1827.

On petition by the prisoner, the case was brought under

the review of the Court of Sudder Foujdaree Adawlut, (present G. W. Anderson, J. Henderson, and D. Greenhill,) when the following judgment was recorded:—"The Court, after mature deliberation upon the papers and proceedings of this case, does not consider it proved, that the prisoner has committed an act rendering him liable to a criminal prosecution, but that the prosecutors should have sought their redress by a Civil Action. The Regulation under which the punishment is inflicted, could not be applied to this case,—the jewels, which the prisoner is accused of having fraudulently removed, never having been entrusted to his charge, nor given into his disposal, by, or on the part of, the persons from whom he got them; they cannot therefore be considered as a charge received from, but as a sale by, them." The Court therefore directed the prisoner's release.

1834

NAVULCHUND BIN KULLIANCHUND'S case.

THE CASE

of

GOKUL BHAWA, and eight others.

Charge—*Robbery*.

1834
13th January.

The case of GOKUL BHAWA, and eight others.

The prisoners were indicted before the Assistant Magistrate in charge of the Zillah of Ahmedabad, for robbing a cart of some grain; and, on conviction, the prisoners, Gokul and Ramjee, were sentenced to six months' imprisonment, with labor and flogging, and the remaining prisoners, to imprisonment for a period of three months.

It was ruled by the Sudder Foujdaree Adawlut, that an Assistant Magistrate in charge of a Zillah was authorized to exercise the full penal powers of a Magistrate.

The Session Judge (E. Grant), on petition from the prisoner Gokul, under the provisions of Section III. of Regulation VIII. of 1831, reviewed this case, and, considering the evidence brought forward to be insufficient to sustain the conviction, besides being of opinion that the sentence of six months' imprisonment awarded against two of the prisoners, Gokul and Ramjee, was illegal without the confirmation of the Magis-

1834

The case of GOKUL BHAWA, and eight others.

trate, determined, under Clause 3, Section III. of the same Regulation, to refer the case to the Sudder Foujdaree Adawlut, with the view to the annulment of all the sentences passed.

Whereupon the Court of Sudder Foujdaree Adawlut (present G. W. Anderson, J. Henderson, and D. Greenhill) was of opinion, that there was no reason to interfere with the sentences passed, on the grounds of the insufficiency of the evidence; and, in respect to the question raised by the Session Judge as to the legality of the sentence passed by the Assistant Magistrate on two of the prisoners, of imprisonment for six months, the Court declared, that, as the Assistant Magistrate was, at the time of passing the sentence, in charge of the Zillah, he was competent to inflict such a punishment.

Vide Interpretation on Section IV. Regulation XII. of 1827.

THE CASE

of

BUNNA VEERA, and nine others.

Charge—*Gang Robbery with Murder.*

1834
24th November.

The case of BUNNA VEERA, and nine others.

In this case the sentences of death passed by the Session Judge on two prisoners for gang robbery with murder were mitigated by the Sudder Foujdaree Adawlut to transportation for life, in consideration of three other persons having suffered capitally for the same offence.

The prisoners were arraigned before the Session Court of Ahmedabad, on the 26th day of August 1834, on an indictment charging them with having formed a portion of a large gang of armed robbers, who, on the night of the 8th of June 1834, attacked and plundered the village of Kumeejla, within the Zillah of Ahmedabad, of cash, jewels, piece-goods, &c. of the value of Rupees 88,000,—with having murdered one Dana Bheema,—and with having wounded, more or less severely, seventeen other persons.—The prisoners severally pleaded, not guilty.

The Session Judge (E. Grant), on the evidence adduced, convicted the prisoners Bunna Veera No. 1, and Jaisa Krustnoo No. 2, and sentenced them severally to be hung, subject

to the confirmation of the Superior Court; but, in the absence of proof, he acquitted the other prisoners.

1834

The case of BUNNA VEERA, and nine others.

On the case being submitted to the Sudder Foujdaree Adawlut, (present J. Henderson and D. Greenhill) the Court concurred in the finding and conviction of the Session Judge, but, it appearing that twenty-four prisoners had been previously tried and convicted of their participation in the same offence, and that three of them had been capitally punished for the murder with which the gang robbery was attended, the Court determined, by virtue of the powers vested in them by Clause 4, Section XXIX. Regulation XIII. of 1827, to mitigate the sentence passed on the prisoners, Bunna Veera and Jaisa Krustnoo, to transportation for life.

THE CASE

of

LALLA ANTERAM.

Charge—*Escape from Custody.*

1835
9th March.

LALLA ANTERAM'S case.

The prisoner was convicted before the detached Assistant Session Judge of Dhoolia, for having, on the 5th day of November 1834, escaped from legal custody, while working as a convict on the public roads near the Town of Dhoolia, and was sentenced to two years' imprisonment, in addition to his former sentence.

The prisoner sentenced by the Assistant Session Judge of Dhoolia, to two years' imprisonment for escape from custody.

Held by the Sudder Foujdaree Adawlut, that this sentence was illegal, as an Assistant Judge has only the powers of a Criminal Judge, and not of a Session Judge; and as by Sec. XXIV. Reg. XIV. of 1827, Courts of Circuit, *i. e.* Session Judges, are alone authorized to take cognizance of cases of escape from custody. The Assist. Session Judge's

On the case coming before the Judges of the Sudder Foujdaree Adawlut, (present G.W.Anderson, J. Henderson, and D. Greenhill,) the Court recorded the following resolution:—"In reference to this case, the Court finding that the Assistant Session Judge has only the powers of a Criminal Judge, and not of a Session Judge or Court of Circuit, and that it is provided by Sec. XXIV. Reg. XIV. of 1827, that the Court of Circuit only can try prisoners for escape from custody, and therefore that the Session Judge alone can try this or any

1835

LALLA ANTERAM'S case.

other cases of escape from custody, he being in the place of the Court of Circuit, and that such cannot be tried by an Assistant Session Judge, he not having the power, and not being in the place, of the Court of Circuit.* The sentence, therefore, of the Assistant Session Judge is annulled; and it is ordered, that the prisoner be put upon his trial before the Session Judge for the offence with which he is charged."

proceedings accordingly quashed, and a new trial ordered.

On the new trial ordered, the same sentence was passed, which was confirmed by the Sudder Foujdaree Adawlut, reckoning from the date of the original sentence.

THE CASE

of

PURUSHRAM WULLUD GOVINDSHETT,

and three others.

Charge—*Coining.*

1835
11th May.

The case of PURUSHRAM WD. GOVINDSHETT, and three others.

The prisoners, Purushram, Succaram, and Babjee, Sonars, were indicted before the Session Judge of Ahmednuggur, on the 23rd of May 1834, for coining money without the authority of Government, and the prisoner Bhiccajee, with uttering the money so unlawfully coined.—Plea, not guilty.

Ruled by the Sudder Foujdaree Adawlut, that coining gold Venetians, which were not used as current coin in India, was not an offence punishable under the provisions of Sec. XVIII. Reg. XIV. of 1827.

The evidence proved, that the prisoners Purushram and Succaram coined sixty-five gold Venetians, which they sold to the prisoner Bhiccajee; but it was not equally clear, that the prisoner Babjee was implicated in the coining, nor was it proved that Bhiccajee, after buying the Venetians, had uttered them to any one.

The Session Judge (H. H. Glass) found the prisoners Purushram and Succaram guilty of the charge preferred, and

* The Interpretation passed on Sec. XXIV. of Reg. XIV. of 1827, in re Lugna, dated the 16th June 1834, was a case in which the sentense of an Assistant Magistrate was annulled on the grounds that he was not authorized to take cognizance of cases of escape from custody.

1835

The case of PURUSHRAM WD. GOVINDSHETT, and three others.

sentenced them, under the provisions of Section XVIII. of Regulation XIV. of 1827, to be severally imprisoned for two years, and to pay each a fine of Rupees one hundred, commutable into one year of further imprisonment; but the prisoners Babjee and Bhiccajee he acquitted in the absence of sufficient proof.

By the Sudder Foujdaree Adawlut—Mr. Kentish Acting Second Puisne Judge: "I do not consider Reg. XIV. of 1827, Sec. XVIII. applies to foreign money, but to that only forming the currency of India: the sentence, therefore, *in* my opinion, cannot be sustained."

Mr. E. H. Baillie, the Acting Senior Judge, concurred in the opinion expressed by Mr. Kentish.

Mr. G. L. Elliot, Acting Puisne Judge: "I am of opinion, that the Venetians must be considered as money, and therefore coining Venetians would come under Section XVIII. of Reg. XIV. of 1827: besides, what would be the prisoner's object in coining them, unless he had in view some fraudulent intention? I am for upholding the Session Judge's sentence."

The Court, therefore, in accordance with the majority of voices, acquitted both prisoners, on the grounds that the offence charged did not come within the provisions of Sec. XVIII. Reg. XIV. of 1827.

THE CASE

of

PUTHOO JORA,

Charge—*Murder*.

1835
6th July.

PUTHOO JORA'S case.

The prisoner convicted of murdering a

This prisoner was tried before the Session Judge of Ahmedabad, on the 6th day of June 1835, on an indictment charging him in the first count with the murder of one Atheeth Nath, a Gosaen, and in the second count with an

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PUTHOO JORA'S case.

Gosaen, while in the act of adultery with his wife, and sentenced to death; but on recommendation to mercy by the Session Judge, was finally acquitted by the Sudder Foujdaree Adawlut, on the grounds of the extreme provocation given.

assault on his wife, in attempting to cut off her nose. The prisoner pleaded guilty to the first count, and not guilty to the second.

The facts of this case were as follows:—The prisoner, on his return home from his fields late on the evening of Friday the 15th of November 1833, found the deceased in his cowshed in the act of adultery with his wife. Incensed at this provocation, the prisoner drew his sword, and in the first transport of passion killed the adulterer; the prisoner next seized his wife, and with the same sword inflicted a wound on her nose and face, and then absconded. The prisoner was subsequently apprehended in May 1835, near his own village, and on being taken before the Koomavisdar of Veerumgaum, confessed that he had killed the deceased as stated.

The prisoner, on his trial, confirmed his original confession, but urged that he had killed the deceased under circumstances of extreme provocation, and on that ground craved mercy from the Court.

The Session Judge (J. A. Shaw) found the prisoner guilty of both counts of the charge preferred, and in compliance with the Law as laid down in Clause 4, Section XXVI. of Regulation XIV. of 1827, sentenced him to suffer death, subject to the confirmation of the Superior Court. The Session Judge then proceeded to record the following recommendation for mercy:—"The Session Judge having passed judgment upon the prisoner agreeably to the Laws, feels it his duty to recommend the prisoner in the strongest terms to the mercy of the Judges of the Sudder Foujdaree Adawlut. The offence, severely punishable as it is by the Laws, is one which has always been viewed by Native Legislators in a far more lenient light, and no doubt the prisoner has grown up from his youth with sentiments conforming to the general feeling of his countrymen on these subjects. Therefore, though the unfortunate result of this act has been the deprivation of a fellow-creature of life, not only does it not appear that it was preceded by feelings of vindictive premeditation, but it does appear that it arose from the immediate detection of an injury of the most serious and irritating description, and was effected on the spur of the

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PUTHOO JORA'S case.

moment, before time had been allowed for reflection of any sort. It is a case which may be brought home to the house of any man (for it is not a crime peculiar to vicious men); and though the cold and deliberate voice of the Law may render it urgently necessary to assign the punishment of death, yet the principles of humanity render it equally essential, before death is inflicted, to consider the nature of the provocation to the crime, the manner in which it has been carried into execution, and the preconceived notions of the community (in which the prisoner lives) regarding the character of the offence which has been committed." And on these grounds, the Session Judge warmly recommended the prisoner to the mercy of the Superior Tribunal.

By the Sudder Foujdaree Adawlut:—"The Court (present E. H. Baillie and J. Kentish), after mature deliberation on the circumstances of the case, determined, in virtue of the powers vested in it by Regulation XIII. Section XXVII. Clause 2, of 1827, to acquit the prisoner, and direct his discharge."

THE CASE

of

MAHAISHWUR BHANJEE, Brahmin.

Charge—*Murder*.

1835
31st August.

The case of MAHAISHWUR BHANJEE, Brahmin.

The prisoner, a Brahmin, convicted of murdering a Brahmin under circumstances of great atrocity, and sentenced to death.

This prisoner was indicted before the Session Judge of Ahmedabad, on the 6th day of August 1835, for having, on the night of the 24th of July 1835, murdered one Tooljaram, a Brahmin, and for having severely wounded with a sword one Sanklee, daughter of the deceased.

The prisoner, on being arraigned, pleaded guilty, and confirmed his original confession made before the Koomavisdar of Veerumgaum.

From the depositions made by the witnesses before the committing Magistrate, and the prisoner's own confession, it ap-

1835

The case of MAHAISHWUR BHANJEE, Brahmin.

peared, that the deceased had carried on a criminal intercourse with one Juttun, a Brahminee widow, and a relative of the prisoner, who became so enraged at the frequency of their intrigues, that he determined to murder Tooljaram. The prisoner accordingly arming himself with a sword, went to the village of Hurreepoora on the night of the 24th of July 1835, and there finding Tooljaram lying asleep on a cot in front of his house, the prisoner inflicted five sword cuts on Tooljaram's person, and then fled. The neighbours, on being aroused by Tooljaram's cries, hurried to the spot, and discovered Tooljaram and his infant daughter (a child of three years of age, who had accidentally been sleeping on the same cot with her father) both severely wounded. Tooljaram's wounds were of a very serious nature; he had received a deep thrust in his chest, his left arm was nearly cut off at the shoulder, and his bowels were laid open by a cut across the abdomen, and the child Sanklee had lost her right leg by one of the cuts that had so grievously injured the father. Tooljaram expired before morning, declaring in his last moments, that the prisoner was the person who had wounded him.

The Session Judge (J. A. Shaw) convicted the prisoner of the charge preferred, and in proceeding to pass upon the prisoner the extreme penalty of the Law, the Session Judge made the following remarks:—"The Session Judge, in passing this sentence, is not at all unmindful, that the prisoner is a Brahmin; but he considers not only that the moral crime proved against the prisoner, is one of a very heinous nature, and as far as the Session Judge can perceive, unattended by any circumstances of just extenuation, but that the religious offence, viz. the murder of a Brahmin, established against the prisoner, is one of so heterodox a nature, that no caste can fairly advance scruples to the extent of the prisoner's sentence, without giving sufficient cause for suspecting that it is actuated by other motives than religious zeal. The Session Judge, therefore, sentences the prisoner to be taken to the place of execution in Ahmedadad, and there to be hung by the neck until he be dead, subject to the confirmation of the Superior Court."

1835.

The case of MAHAISHWUR BHANJEE, Brahmin.

The Sudder Foujdaree Adawlut (present S. Marriott and D. Greenhill), concurring in the conviction of the prisoner, considered, that although a Brahmin, he was not entitled to the benefit of Clause 5, Section IV. of Regulation XIV. of 1827, as this was a case of such deep atrocity, that the religious feelings of the Native community could not be shocked by the execution of the prisoner. The Court, therefore, confirmed the sentence of death passed by the Session Judge on the prisoner.

THE CASE

of

ALICE FERNANDA, and six others.

Charge—*Murder.*

1835
25th September.

The case of ALICE FERNANDA & others.

It was ruled in this case, that a Roman Catholic Priest could not be compelled, under Cl. 4, Sec. XXXVI. Regulation XIII. of 1827, to make disclosures of death-bed confessions, communicated to him in his priestly capacity of confessor.

The prisoners, Alice, Manoel, Katijah, Souza, Antone, Cabrella, and Rozario, were brought up for examination before the Assistant Magistrate of Rutnagiree, (C. M. Harrison) on the 8th day of September 1835, charged with the murder of one Christina, widow of the late Constancio Deas.—Plea, not guilty.

It appeared from the investigation held before the Assistant Magistrate, that the deceased Christina had become pregnant by the prisoner Cabrella; that on the 1st of September 1835, she had been prematurely delivered of a child, and that on the following day both the mother and child had died. The Magistrate, entertaining suspicions that the deceased had not died a natural death, from the hurried and excited manner in which the permission for her burial had been applied for, in connection with the fact of her pregnancy in widowhood, requested the Civil Surgeon to examine the body. Doctor Stewart, the Civil Surgeon, stated that he opened the body of the deceased on the day of her death, and found much inflammation about the stomach, and upper part of the intestines, which he

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The case of ALICE FERNANDA & others.

considered might have occurred naturally, or been induced by acrid vegetable purgatives or emetics, but from the morbid appearance of the womb, and from the extravasation of blood on the posterior part of it, he was inclined to the opinion, that death had been caused by pressure, or other improper manual efforts employed to effect an abortion. Neither could the Civil Surgeon give any positive opinion as to the cause which occasioned the death of the infant, incipient putrefaction having taken place; there, however, seemed to be an injury under the lower right jaw-bone. It was also elicited in evidence, that the prisoners Cabrella and Rozario, had, for some days before the deceased died, been in the habit of bringing to the deceased's house some medicine in a bottle, which they gave to the prisoner Alice to administer to the deceased. The prisoner Katijah was the midwife, who attended the deceased on her accouchement; and the prisoners Souza and Antone were proved to have buried the body of the deceased child with unusual haste, and in a most unusual manner, at night, in a back garden, and by covering the spot with a heap of stones and rubbish. These circumstances, connected with the opinion given by the Civil Surgeon, tended to throw strong suspicion upon the parties charged, that the deceased's death had been occasioned by some improper means the prisoners had employed to procure an abortion. The most important witness, however, in the case, was the Reverend Francis Gregory Camillo de Souza, a Roman Catholic Priest, who deposed, that he was called in to minister to the deceased in his priestly capacity, and that on her death-bed she made to him a confession, the particulars of which, from religious scruples, he refused to disclose, without a dispensation from the Roman Catholic Bishop of Goa.

Hence arose a question, whether this witness was not bound, under the provisions of Cl. 4, Sec. XXXVI. of Regulation XIII. of 1827, to disclose such facts as had come to his knowledge by the deceased's death-bed confession, or whether such a confession was to be held in the light of a privileged communication. This point, the Magistrate was of opinion, involved a question of much nicety, and therefore he determined

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The case of ALICE FERNANDA & others.

to submit the case to the Judges of the Sudder Foujdaree Adawlut for instructions."

By the Court of Sudder Foujdaree Adawlut. Mr. S. Marriott:—"If a confession was made by the deceased, it must have been made under the most secret confidence, which ought not to be disturbed by the interference of the Law, even though a dispensation might be obtained for the Priest from the Bishop of Goa, as suggested by the Magistrate, Mr. A. Elphinstone. I think the Magistrate should be advised to the above effect."

Mr. D. Greenhill:—"I am not sure that the confession, as *affects others*, ought not to be given in evidence. For, although the practice may have been to respect religious confessions in some cases, as confined to the individual confessing, yet I am not prepared to say, that in a case of murder, especially, a disclosure of the murderer, or of facts leading to detection, should not be given in evidence by the Priest. In the case before us, I apprehend, the Priest's evidence ought to be taken."

The Court being divided in opinion, the case was referred to a third Judge.

Whereupon the Hon'ble the Chief Judge (E. Sutherland) recorded the following minute:—"Agreeably to the Bombay Code of Regulations, it is clear every person is a competent witness, who has arrived at the years of discretion, and is of sane mind. By the Law of England, a Roman Catholic Priest is bound to reveal secrets confided to him in the course of confession, so that the Court might, under such circumstances, demand the evidence of the Priest, in the case stated by the Magistrate of Rutnagiree, to be taken in the usual manner. I observe, however, that many of the Judges of England have lamented that the privilege of confidential communications has not extended to Clergymen; and, in a late case, Chief Justice Best said, 'I for one will never compel a Clergyman to disclose communications made to him by a prisoner; but if he chooses to disclose them, I shall receive them in evidence.' These observations applied to a Protestant Clergyman, unfettered by any ties, and must consequently be of much greater

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The case of ALICE FERNANDA & others.

force, when secret confessions have been made to a Roman Catholic Priest, who is bound by the rules of his Church not to make such disclosures under any circumstances.

"In this country, we pay, and are indeed bound to pay, more regard to the religious feelings and scruples of the people, than in England is allowed. I feel much disposed, therefore, to recommend the course of Chief Justice Best to be pursued on this occasion, the more particularly as the reverse might undermine the confidence of the Roman Catholics in their Priests, and do much injury generally from being contrary to the principles of the religion they profess. I think the instructions to Mr. Elphinstone should be, to call on the Priest to give his evidence, and, if he chooses to make disclosures, to receive them, but not to compel him to make disclosures of death-bed communications made to him in his capacity of confessor. Mr. Elphinstone should not apply for any dispensation, but, if the Priest, or any party concerned, desires this course, time may be allowed for their doing so themselves. I do not suppose there would be any advantage in making a direct application, for it would most likely be rejected by the Ecclesiastical Superior of the Priest at Goa, and it is not fit the Magistrate should appear in such a case.

"In conclusion I may add, that I feel I have advocated a course contrary to what is established in England; but while I give this modified opinion, I am aware that the Romish Church makes confession a part of the Sacrament of Penance, and that confessions are to be buried in eternal silence, under the greatest punishment to the Priest who reveals them. It was this knowledge, weighing carefully the effects on the community of compelling disclosures, that guided me in this matter."

Additional minute by Mr. S. Marriott:—"It appears to me, that the Priest's evidence has already been called for and refused.—I should, therefore, suppose it would be unnecessary to give any instructions to the Magistrate on that point.—In regard to the medium of a religious dispensation, I am averse to the measure, even in the qualified mode alluded to by the Hon'ble the Chief Judge.—In conclusion, I would propose, a communication to the Magistrate, to the purport, that had the

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The case of ALICE FERNANDA & others.

Priest chosen to make the disclosure in the evidence, it might have been received, but that no compulsion should be used to obtain disclosures of death-bed communications made to him in his capacity of confessor."

Additional minute by Mr. Greenhill:—"I agree with the Hon'ble Chief Judge, that the Priest should be called upon to give his evidence, and that if, as suggested, he has any difficulties with reference to his religious superiors, he should be allowed time to overcome them; but with regard to any disclosure, made by the deceased, relating to another party, I do not think that the Priest can be, or ought to be, allowed to withhold it."

The Court finally resolved to inform the Magistrate of Rutnagiree, that he should call upon the Priest to give his evidence, and that if the Priest should choose to make disclosures, that functionary should receive them, but should not compel him to make disclosures of death-bed confessions communicated to him in his capacity of confessor. The Court further instructed the Magistrate not to apply to the Superior of the Priest for any dispensation; but if the Priest himself, or any party concerned, desired this measure, to allow time for their doing so themselves.

In the absence of sufficient proof, the prisoners were subsequently discharged by the Magistrate.

THE CASE

of

CRUSTNA BIN SUCSHETT, and eight others.

Charge—*Attempt to commit Gang Robbery.*

1835
13th October.

The case of CRUSTNA BIN SUCSHETT and others.

This case was tried before the Senior Assistant Session Judge of Rutnagiree, on the 8th day of September 1835, when the prisoners, Crustna, Balloo, Tatwuza, Antajee, Sewshett, and Bawajee, were charged with an attempt to

The bare act of a Gang in going out with

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The case of CRUSTNA BIN SUCSHETT and others.

Intent to commit a gang robbery does not constitute an attempt under Sec. XXXVIII. Regulation XIV. of 1827.

commit a Gang Robbery, on the night of the 29th of August 1835, in the village of Warolee, near Rutnagiree, and the prisoners, Bapoojee, Gondah, and Narrain, with concealment before the fact of the design to commit the Robbery. Crustna, Bapoojee, Gondah, and Narrain, pleaded, guilty, and the other prisoners, not guilty.

One Bhickshett, an accomplice, who received a pardon from the Magistrate, and was admitted as a witness for the prosecution, deposed, that he was a member of a gang of thieves, to which the prisoners all belonged; that the gang had laid a plan to rob the house of a rich Bhundaree at Warolee, on the night of the 29th of August 1835; that on the eve of the intended robbery, he became alarmed, went to the Magistrate, and revealed the whole of the circumstances, on the understanding that he should receive a pardon; that the Magistrate enjoined him to proceed with the gang as if nothing had happened, and to act afterwards as a witness against them, at the same time assuring him, that he would send a party of Police to prevent the robbery taking place. Witness accordingly set out from Rutnagiree with the prisoners, Crustna, Balloo, Tatwuza, Antajee, Sewshett, and Bawajee, as originally designed; that on reaching Warolee, they found a number of persons celebrating a festival in the Bhundaree's house; the gang, therefore, considering the opportunity unfavourable, determined to defer the attack, and commenced returning towards Rutnagiree, when they fell in with a party of Police, who apprehended and took them all into custody. The evidence of this accomplice was amply corroborated by the testimony of the Police Peons, and also by the confession of Crustna.

The Senior Assistant Session Judge (B. Hutt), in recording his finding, was of opinion, that it was quite clear, from the confession of Crustna, and the evidence of Bhickshett, that the prisoners had formed an intention of committing a robbery in the village of Warolee, and that it was also evident that they set out on the night of the 29th of August 1835, with the design of making the attempt, but finding the opportunity unfavorable, that they returned without carrying their intention

1835

The case of CRUSTNA BIN SUCSHETT and others.

into effect. This, the Assistant Session Judge held, did not constitute an attempt, in the sense contemplated in Clause 2, Sec. I. and Sec. XXXVIII. of Reg. XIV. of 1827, which he held, must be attended by some overt act, the bare intention not constituting an attempt. Had the act been accomplished, or an attempt made by one, even in the absence of the others, they all setting out with an intention to commit it, would have been guilty of robbery, or attempt to commit robbery; but as neither took place, the Senior Assistant Session Judge held, that all the prisoners must be acquitted, for no attempt being made by the first six prisoners, no concealment on the part of the last three prisoners was punishable. In returning the prisoners to the Magistrate for the adoption of precautionary measures, the Senior Assistant Session Judge remarked, that this appeared precisely a case contemplated in Regulation XII. Sec. XXV. of 1827, where information of an intention of certain persons to commit a specific illegal act did exist, and where it would have been lawful for the Magistrate to have demanded security from the prisoners.

The Magistrate, differing in opinion with the Senior Assistant Session Judge, in regard to that officer's definition of an attempt, submitted the question for the decision of the Judges of the Court of Sudder Foujdaree Adawlut.

The Court of Sudder Foujdaree Adawlut (present S. Marriott and D. Greenhill), on consideration of the case submitted, "ordered the Magistrate to be informed, in reference to his communication dated the 29th of September 1833, that an intention to commit a crime was not punishable; and that the Senior Assistant Session Judge not considering an attempt to commit robbery proved, was correct in acquitting the prisoners, and in returning them to the Magistrate with the view to the adoption of any precautionary measures he might deem necessary."

THE CASE

of

SHEOLALL NURBHERAM.

1836
11th January.

SHEOLALL NURBHERAM'S case.

The mere having base coin in possession without uttering the same not a penal offence; under the provisions of Sec. XIX. of Regulation XIV. of 1827.

This prisoner was, on the 2d day of November 1835, brought before the Magistrate of Ahmedabad, charged with having seven base Rupees in his possession, with the intention of uttering the same, and being convicted, was sentenced, under the provisions of Sec. XIX. of Reg. XIV. of 1827, to pay a fine of Rupees 21, or in default to be imprisoned for six months.

On petition by the prisoner, the Acting Session Judge (P.W. LeGeyt), under the provisions of Sec. III. Reg. VIII. of 1831, reviewed this case, and recorded his opinion, that as no overt attempt to issue the base coin found in the prisoner's possession was proved against him, and that as by Cl. 2, Sec. XIX. of Reg. XIV. of 1827, it was necessary for conviction, that either the actual issue of the base coin, or an overt attempt to issue it, should be proved, that therefore the prisoner was entitled to an acquittal, because the *mere possession* of base coin could not be held to be an attempt to issue the same.—And under this view the Acting Session Judge submitted the case to the Court of Sudder Foujdaree Adawlut.

The Court of Sudder Foujdaree Adawlut (present E. H. Baillie and D. Greenhill) concurred in opinion with the Acting Session Judge, and directed the prisoner's discharge, on the grounds, that Sec. XIX. of Reg. XIV. of 1827, did not contemplate the subjection of a person to the penalties therein provided, for the merely having base coin in his possession.*

* In re Anjuppa bin Eerappa, the Court of Sudder Foujdare Adawlut, (present A. Bell and J. Pyne, Puisne Judges) citing the above case, again ruled, on the 26th of May 1845, that having base coin in possession was not a penal offence, under Sec. XIX. Reg. XIV. of 1827.

THE CASE

of

JALUM RAMSING.

Charge—*Murder.*

1836
29th February.

JALUM RAMSING'S case.

The prisoner in this case convicted of murder, entirely on circumstantial evidence. The Court confirmed the conviction, but reduced the sentence of death to imprisonment for life.

This case of murder was referred back by the Sudder Foujdaree Adawlut to the Session Judge for additional evidence, and thereon a final sentence of imprisonment for life was passed.

This prisoner was tried on the 8th day of December 1835, at the Session Court of Ahmedabad, for the murder of his wife Mussumaut Rulee.—Plea, not guilty.

It appeared that the prisoner had been married to Mussumaut Rulee about two years; that during that period he had lived in the village of Detroy, in the same house with her and his mother-in-law, Chutoor; that the latter, early on the morning of the 16th of May 1834, went into the fields to work, leaving her daughter and the prisoner alone; that, on her return home about noon, she found the house-door closed, and, on gaining admittance, discovered her daughter lying dead with her throat cut, and near her the sheath of a knife, which Chutoor said was usually worn by the prisoner. The prisoner had absconded, and was, therefore, concluded to be the murderer. Upon information of these facts, the Magistrate issued a proclamation, offering a reward for the prisoner's apprehension; but it was not until the 25th of August 1835, that the Patell of Detroy heard of the prisoner, and apprehended him in his father's house at Motera. On being apprehended, he denied the murder, but made an attempt to escape.

The prisoner in his defence said, that awaking on the morning of the 16th May 1834, he found his wife dead, with her throat cut; that he suspected some paramour had murdered her, and that being alone in the house, he absconded from fear of being himself suspected of the murder.

The Acting Session Judge (P. W. LeGeyt), upon the evidence adduced, convicted the prisoner, and sentenced him to death, subject to the confirmation of the Superior Court.

Clause 4, Section XXVI. Regulation XIV. of 1827.

1836

JALUM RAMSING'S case.

By the Court of Sudder Foujdaree Adawlut:—Mr. Baillie considered the facts, that the prisoner was alone with his wife on the morning of the 16th May; his admission, that he saw her dead body with the throat cut on that very morning; his immediate flight; the long period which elapsed before his return to his father's village; the sheath of the knife said to be his property; connected with his unsatisfactory explanation, afforded the most violent presumption of the guilt of the prisoner.

Mr. D. Greenhill was not prepared to confirm the conviction, the evidence, in his opinion, being defective, and the prisoner's motive for committing the murder not being shown.

On this difference of opinion, the Honorable the Chief Judge (J. Sutherland) being called in, recorded the following minute:—"This case depends entirely on presumptive evidence, for the commission of the murder was not seen by any one, and the prisoner has made no direct confession, but denies being the murderer. I think the evidence might have been more satisfactory, had the Session Judge endeavoured to set forth more fully than he has done, the cause or motive which led to the act, supposing the prisoner to have been the murderer. The prisoner denies that he had any quarrels with his wife; while upon this important point no pains have been taken,—the Inquest Report states the fact of existing disputes; while the mother-in-law of the prisoner, in her evidence before the Court, swore that no enmity existed, although in her deposition before the Koomavisdar, sworn to before the Assistant Magistrate, she positively declared to daily disputes and altercations, and gave this as the cause of the murder; while, I regret to say, the Session Judge took no notice of the discrepancy, which he should have done; there were two other persons, who might have spoken to the same point, Bhadur and Thoba Wakta, who were not called.—I think the defect should be supplied, although I am willing to proceed with the case, should the Court be so disposed, for the presumptive evidence is strong against the prisoner. If the references be made, I would also propose, that the manner

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JALUM RAMSING'S case.

in which the Inquest Report has been sworn to, should be pointed out; and furthermore, it should be an instruction to the Judge to endeavour to ascertain, whether there is any one to be met with who can identify the sheath of the knife found near the deceased, and whether the prisoner usually carried the knife with such a case about his person, or left it at home."

The Court, concurring in this proposal, resolved to make a reference to the Acting Session Judge upon the points noticed in the Honorable the Chief Judge's minute.

On the Acting Session Judge submitting his supplemental record to the Court, it appeared that the prisoner was at enmity with his mother-in-law, Chutoor; but there was no reason for concluding he had quarrelled with his wife, to whom he was said to be much attached; neither was there any additional evidence forthcoming to identify the sheath found near the deceased.

The Court (present S. Marriott, E. H. Baillie, and D. Greenhill) thereupon finally resolved to confirm the conviction, and applying the provisions of Clause 4, Section XXVI. Regulation XIV. of 1827, and by virtue Cl. 4, Section XXIX. Regulation XIII. of 1827, under all the circumstances of the case, determined to mitigate the sentence passed upon the prisoner, to imprisonment for life.

THE CASE

of

DAMOJEE KOSAJEE, and others.

1836
19th September.

Charge—*Assault.*

The case of DAMOJEE KOSAJEE, and others.

The summary disposal of a criminal case without keeping a record of the proceedings, where the punishment awarded exceeds the limitation of Sec. XIV. Regulation XII. of 1827, held by the Sudder Foujdaree Adawlut to be illegal.

The prisoners in this case were convicted before the Assistant Magistrate of Ahmednuggur, of a simple Assault, and sentenced to pay a fine of Rupees five each, commutable into ten days' ordinary imprisonment. This sentence, on the prisoners petitioning against it, was confirmed by the Magistrate. The prisoners then presented a petition to the visiting Judicial Commissioner, who, finding that the Assistant Magistrate had kept no proceedings, but had disposed of this case summarily under the concluding para. of Sec. XIV. Regulation XII. of 1827, held the procedure to be illegal, because, as the sentence awarded by the Assistant Magistrate exceeded the limitation of punishment specified in that para., it was incumbent upon him to have taken, and recorded, the depositions of the witnesses, and to have attended to all other forms laid down for the conduct of Magisterial Trials in Chap. VI. of Regulation XIII. of 1827. The Judicial Commissioner (E. H. Baillie) was further of opinion, that the irregularity here pointed out was a departure from the Regulations, which rendered it necessary to annul the sentence passed.

On a subsequent reference to the Sudder Foujdaree Adawlut, the Court (present S. Marriott, E. L. Elliot, and D. Greenhill) fully concurred in the opinion of the Judicial Commissioner.

THE CASE

of

HOOZOORSHAH WULUD MUZARALLASHAH.

Charge—*Murder.*

1836
13th December.

HOOZOORSHAH WULUD MUZARALLASHAH'S case.

This prisoner was indicted for wilful murder before B. Hutt, Esquire, the Session Judge of Ahmednuggur, on the 29th day of August 1836, and being convicted was sentenced to death.

In all criminal cases where prisoners show indications of insanity either at or after trial, it is essential to enquire into the state of the prisoner's mind at the time of the commission of the offence laid to his charge.

The circumstances of the case were these:—The prisoner had been betrothed to the deceased Beebun, the daughter of Skeik Mucdoom, the prosecutor, and having entered into a compact to defray the expenses of the marriage, he had advanced some money to the prosecutor on account of it, but was unable, from want of means, to fulfil his engagement.—In June 1836, the prisoner had an altercation with the prosecutor about the marriage, in consequence of which the marriage was broken off, and it only remained for the prosecutor to repay the money advanced by the prisoner: but, on the 2nd of June, two days after the altercation, the prisoner, seeing Beebun in company with her mother in the village of Newassa, about to enter the house of the Kazee of that place, ran towards Beebun, seized her by the hand, and asked her what her intentions were. On Beebun's referring him to her father, the prisoner drew his dagger, and stabbed her four times. From the wounds thus inflicted, Beebun died on the 2nd of July 1836. The prisoner was apprehended immediately after the assault, and on being taken to the Chowry, made a full confession of his guilt. Nothing was elicited at the trial, to show that the prisoner was suffering from mental derangement; but it clearly appeared, that the prisoner, under the impulse of jealousy and revenge, had fully resolved to marry or murder Beebun.

The sentence of death passed by the Session Judge, received the confirmation of the Court of Sudder Foujdaree Adawlut, on the 27th of September 1836, and the usual warrant

1836

HOOZOORSHAH WULUD MUZARAL-LASHAH'S case.

for the prisoner's execution was accordingly issued. On the 4th of October following, the Session Judge transmitted to the Court a medical certificate from the Civil Surgeon at Ahmednuggur, stating that the prisoner Hoozoorshah was in Hospital, undergoing medical treatment for insanity, and reported that he (the Session Judge) had stayed the Court's warrant in consequence.

Upon the receipt of this communication, the Court of Sudder Foujdaree Adawlut directed the Session Judge to make enquiries as to the prisoner's state of mind about the time he committed the murder, and to report whether there was any reason to suppose that *the prisoner was insane at the time he perpetrated the murder.* In compliance with this direction, the Session Judge certified the depositions of eight persons, who had all been long and intimately acquainted with the prisoner, and some of whom were constantly living with him up to the day of the murder. From these depositions it appeared, that the prisoner had never shown any indication of insanity. The Session Judge further stated, that the prisoner's conduct on his trial did not indicate any aberration of intellect, and, that he was therefore led to conclude, that the prisoner's incoherent behaviour, since the sentence, was feigned and assumed.

The Court next directed the Session Judge to inform the Judges of the Sudder Foujdaree Adawlut, whenever the Civil Surgeon could certify that the prisoner had become sane, and to suspend execution of the Court's warrant until further instructions.

On the 3rd of December the Session Judge submitted a report from the Civil Surgeon, stating that the prisoner Hoozoorshah was no longer in a deranged state of mind. The Session Judge also added, that the prisoner, whilst in Hospital on the night of the 29th of November, was detected attempting to effect his escape by making a hole in the mud wall of the cell in which he was confined.

The Court of Sudder Foujdaree Adawlut (present S. Marriott and D. Greenhill), after mature consideration of all the circumstances brought to notice in this case, finally resolved

to issue a new warrant, reciting the former one, and the cause of its suspension, and directing the capital sentence awarded against the prisoner to be carried into execution.

1836

HOOZOORSHAH WULUD MUZARAL-LASHAH'S case.

NOTE.—This prisoner, on the scaffold, confessed that he had feigned madness, in the hope of a remission of his capital sentence.

THE CASE
of
MUKOWA, WIDOW OF KASSEEM.
Charge—*Murder*.

1836
19th December.

MUKOWA'S case.

This prisoner was tried before the Session Judge of Dharwar, on 18th day of September 1835, for the murder of one Veersunga, a child of seven years of age.—Plea, not guilty.

It was clearly proved, that the prisoner, under the pretext of affection, had enticed the child away from his home, and led him to a lonely place, where she in cold blood murdered him, by strangulation, for the sake of a few ornaments of trifling value, and then threw his body into a well.

The Session Judge (J. B. Simson) convicted the prisoner; and considering that the case exhibited a degree of turpitude, that nothing less than the highest penalty of the Law was suited to meet, he sentenced her to death, under the provisions of Cl. 4, Sec. XXVI. of Regulation XIV. of 1827; and this sentence was finally confirmed by the Court of Sudder Foujdaree Adawlut, on the 2nd of November 1835.

On the 14th of November following, the Session Judge reported, that he had suspended the execution of the Court's warrant, in consequence of the prisoner Mukowa having been declared, by a Jury of Matrons, to be in the fifth month of her pregnancy.

This report induced the Court to recommend the prisoner to the clemency of Government, and her sentence of death was finally commuted, by the Right Hon'ble the Governor in Council, to imprisonment for life; and the usual warrant was accordingly issued to the Session Judge.

Ruled by the Sudder Foujdaree Adawlut, that when the Honorable the Governor in Council once commutes a sentence of death into imprisonment for life, it is not competent for him, on any grounds, to revert to the original sentence.

In this case a rule was laid down for the better examination of Women pleading pregnancy, when sentenced to death. And it was also determined, that the execution of a Woman sentenced capitally, when pregnant, was to be deferred until forty days after delivery.

Vide the Court's interpretation, dated 14th November 1836.

1836

MUKOWA'S CASE.

On the 10th of August 1836, the Session Judge again addressed the Court, stating, that as the period for the prisoner's confinement had long passed, he had requested the Civil Surgeon to give his opinion as to her condition, and that that officer had reported, "that the prisoner Mukowa was not pregnant; and that the appearances which might have led to a contrary belief, were caused by excessive obesity of the abdomen."

Hence, as the grounds on which mercy had been extended to the prisoner had proved to be erroneous, and, as her original crime had been aggravated by the deceit she had practised, a question arose, whether, under such circumstances, it was not competent to the Right Hon'ble the Governor in Council to cancel the commuted sentence of imprisonment for life, and revert to the original judgment of death. The Court of Sudder Foujdaree Adawlut (present S. Marriott, E. H. Baillie, and E. L. Elliot,) ruled, that under the provisions of Cl. 3, Sec. XXXI. of Regulation XIII. of 1827, the Right Hon'ble the Governor in Council having commuted the sentence of death into imprisonment for life, it was not competent for him on any grounds to revert to the original sentence.

This opinion was duly communicated to Government, when the Right Hon'ble the Governor in Council was pleased to coincide in the opinion expressed by the Court, that the sentence of perpetual imprisonment should not be disturbed.*

* This case, on a reference to the Supreme Government, led to the adoption of the Court's Circular Orders No. 149 and 212.

To,

THE SESSION JUDGES.

GENTLEMEN,

I am directed by the Judges of the Sudder Foujdaree Adawlut, under instructions from the Right Hon'ble the Governor in Council, to suggest the following Rules and Observations for the better examination of Women, who shall in future plead Pregnancy when sentenced to death.

2nd. The Judges are apprehensive, that a firm reliance cannot be placed on the verdict of a Jury of Natives, quite uncontrolled by European supervision, and the examination should consequently, it appears to them, be entrusted to a Medical Officer of skill and experience, so that there may be no danger of an incompetent person being selected, in the event of the Civil Surgeon, or other European Professional Gentlemen, not being available.

3rd. I am also instructed to observe, that there may be cases in which

THE CASE

of

NUNNEE AND ABDOOL KADER.

Charge—*Robbery.*

1837
5th June

The case of NUNNEE and another.

Ruled that if there was not sufficient evidence for the conviction of a party, charged with an offence, he could not be required, under the provisions of Secs. XXV. & XXVII. of Regulation XII. of 1827, to furnish security for his appearance.

The prisoners were brought up before the Assistant Magistrate of Tannah, (D. Davidson) on the 4th of April 1837, charged with robbery; but this offence not being proved, the Assistant Magistrate ordered the prisoners to be discharged, on furnishing security in the sum of Rupees fifty, each, to appear when required during three months, or in default, to be imprisoned for the period of three months, under the provisions of Sections XXV. and XXVII. Regulation XII. of 1827.

(either from the prejudices of Caste, which should be respected, or from some other feeling in the Woman or her Relations, which it would not be proper to offend) her personal examination may be objected to. The Judges, therefore, request you will take into consideration the most eligible mode of procedure in such instances, and whether the scruple adverted to should in all cases be overborne ; or if not, then, in what way the situation of the Woman is to be ascertained. A Medical Officer might possibly be employed to interrogate the Jury of Natives, and if dissatisfied with their answer, to give them instructions for a renewed examination.

4th. The Judges of the Sudder Foujdaree Adawlut conceive it necessary to make some provisions for the examination, from time to time, of a Woman under these circumstances, and request that you will suggest a Rule or Rules for the purpose; which appears to be the more desirable, as a successful example has been afforded of setting up a false plea of Pregnancy, which may probably be followed hereafter by other Women convicted of capital offences.

(Signed) P. W. LEGEYT,
Register.

Bombay, Sudder Foujdaree Adawlut, 20th May 1838.

To,

THE SESSION JUDGES.

GENTLEMEN,

I am directed by the Judges of the Sudder Foujdaree Adawlut, under instructions from Government, to direct, that on all future occasions on which a capital sentence may be passed against a Woman in a state of Pregnancy, the execution of the same be deferred until forty days after her delivery.

(Signed) G. GRANT,
Register.

Bombay, Sudder Foujdaree Adawlut, 26th June 1840.

1837

The case of NUNNEE and another,

The Judges of the Sudder Foujdaree Adawlut, observing in the Tannah Magistrate's criminal return the incorrectness of this decision, directed that functionary to certify the proceedings in the case; where upon the Court (S. Marriott and E. L. Elliot) passed the following final order:—"The Court is of opinion, that the Sections quoted by the Assistant Magistrate do not provide for security for 'appearance' being taken, after a case has been disposed of by the Magistrate. If the Magistrate thought that necessity existed for such a course, he was at liberty to require security for 'future good conduct,' but not for 'appearance.' Resolved, therefore, that the order requiring security for appearance be cancelled, and that the prisoner, if in confinement, in default of furnishing such security, be forthwith discharged."

THE CASE

of

LUXIAH BIN BUDIAH BHEEL.

Charge—*Perjury*.

1837
31st July

LUXIAH BIN BUDIAH'S case.

The prisoner personating a friend, gave evidence before a Session Court under his friend's name. Held that the prisoner was properly convicted of Perjury, though the circumstances which he falsely deposed to have seen, in fact took place.

This prisoner was indicted for Perjury at the half yearly Sessions, held, for the province of Khandesh, in July 1837.

The circumstances of the case were as follows:—On the trial of Parah Bheel for highway robbery at the Sessions, one Kalliah bin Dowjee, a witness for the prosecution, was called, when the prisoner answered and appeared in Court personating Kalliah bin Dowjee. On being duly sworn, the prisoner deposed, that his name was Kalliah bin Dowjee; that on or about the 10th of January 1837, he had followed up the footprints of some robbers traced to his village, Byanee, and that he with others had traced them on to the confines of the village of Sartarkee. On being cross-examined by the Session Judge, respecting various particulars he had not come prepared to answer, he eventually admitted, that his name was not Kalliah

1837

LUXIAH BIN BUDIAH'S case.

bin Dowjee, but Luxiah bin Budiah, and further, that he was not present when the robbers were traced to the village of Byanee.

The prisoner in his defence urged, that his friend Kalliah bin Dowjee was sick, and unable to attend the Court, and that therefore he came to depose for him; that the facts to which he had deposed were perfectly true; and although he was not himself an eye-witness, yet they were notorious to the whole of the villagers of Byanee.

The Session Judge (B. Hutt) was of opinion, that this offence amounted to Perjury, and that it was in no way altered by the prisoner's defence; and considering the dangerous consequences likely to result from persons giving evidence under fictitious names, he sentenced the prisoner to one year's imprisonment with labor, and to receive twenty-five stripes in the Bazaar.

The Court of Sudder Foujdaree Adawlut (present G. L. Elliot, and J. B. Simson) held, that the prisoner had been properly convicted of Perjury, and therefore confirmed the sentence passed by the Session Judge.

THE CASE

of

ROWJEE WULLUD ABBAJEE, and others.

Charge—*Fraud.*

1838
24th July

The case of ROWJEE WULLUD ABBAJEE, and others.

The village Revenue Officers of any Surunjam village, within the Zillahs of the Bombay Presidency, when there is no special engagement to the contrary, are liable to the ordinary Criminal Courts for Revenue offences.

The prisoner Rowjee Wullud Abbajee and others were convicted before the Assistant Session Judge of Sholapoor, on the 15th day of February 1838, of Fraud, in having signed a false revenue account of the Surunjam village of Tudwallah, Purgunnah Dhokie, within the Sub-collectorate of Sholapoor, and thereby defrauded Government of Rupees 98-9-2, and were sentenced to pay a fine of Rupees 100 each, commutable in default to twelve months' imprisonment, under Regulation XVI. Section XXVII. of 1827.

1838

The case of ROWJEE WULLUD ABBAJEE, and others.

In reviewing this case, the Judicial Commissioner for the Southern Mahratta country, (D. Greenhill) entertained doubts whether a Revenue Officer of a Surunjam village was amenable to the Session Court for Fraud, and therefore requested the opinion of the Sub-Collector on this point.

To this reference the Sub-Collector made the following reply:—

SIR,

I beg to inform you, that the village of Tudwallah, within this Sub-Collectorate, is said to be the Surunjamee village of Syajeerow Nimbalkur, as he possesses a right to 52¼ per cent. upon the annual revenue. The amount of the revenue is, however, determined annually, exactly as in the Khalsa villages, by the Revenue Officers of our establishment. Syajeerow Nimbalkur is the principal holder in Surunjamee in this village, but there are other sharers in the revenue.

I believe it has never been held, that the villages given in Surunjam conferred more than a claim to pecuniary advantages; and I think, I am correct in stating, that a small portion of the revenue has in all instances been retained,—too small in amount to have been retained on account of its value, and apparently retained with a view to show the right of sovereignty in the original bestower.

I beg to state, that in my opinion the village officers of Tudwallah are liable to the ordinary criminal Courts for revenue offences.

(Signed) P. STEWART,
Sub-Collector.

The Judicial Commissioner, still doubting the jurisdiction of the Criminal Courts to entertain cases like the present, submitted the proceedings for the decision of the Superior Court.

On the 24th July 1838, the case was brought on for discussion before the Court of Sudder Foujdaree Adawlut, present G. Giberne, and J. Pyne, Puisne Judges.

Minute by Mr. Pyne:—"I am disposed to think, that in grants of Surunjamee, where a portion only of the village was alienated, that the Sircar reserved to itself the 'Foujdaree Umul.' In the Southern Konkun, 'do-turfee' villages, belonging to

1838

The case of ROWJEE WULLUD ABBAJEE, and others.

the Sirkulgurkur and the Kolapoor Rajah, are numerous; under every case, as far as my recollection serves me, the British Government exercised the right of sovereignty. In the present instance, the officers punished are in attendance in the village, and I think liable to the jurisdiction of the Criminal Courts, unless some specific arrangement may have been entered into with the Enamdars, which would have been noticed by the Sub-Collector, had such speciality existed."

Mr. G. Giberne considered, under the Appendix A. of Regulation XXIX. of 1827, the jurisdiction to be complete.

The Court therefore resolved, that as the Peishwah's share of the Purgunnah Dhokie was included in the territory brought under the Regulations by Regulation XXIX. of 1827, there could be no doubt of the jurisdiction of the Company's Courts.

THE CASE

of

MYPUTTEE WULLUD WAKNACK.

1838
25th October.

MYPUTTEE WAKNACK'S case.

Charge—*Instigating Gang Robbery.*

In this case, the Court of Sudder Foujdaree Adawlut found, that no attempt or act followed the expressed intention of the prisoner to instigate robbery, and therefore acquitted and discharged him.

This trial came on before G. H. Pitt, Esquire, Acting Assistant Session Judge of Sholapoor, on the 25th of January 1838.

Three persons, named Luxia, Buggia, and Dussratta, deposed, that the prisoner, a resident in the village of Jamgaum, on the morning of the 21st of December 1837, told them that the Mhars of Jamgaum had assembled, intending to rob the house of a Dyer in the village of Nurkhair, and had endeavoured to induce them to join in committing the contemplated robbery, but failed. It was proved, that on the same night a gang robbery was perpetrated in the village of Jamgaum, but that no robbery took place at Nurkhair. Suspicion falling upon the prisoner, his house was searched, and there, certain

1838

MYPUTTEE WAKNACK'S case.

implements used for house-breaking were found. The prisoner, on his trial before the Session Court, was convicted of instigating Gang Robbery, and sentenced, under the provisions of Clause 5, Section I. Regulation XIV. of 1827, to two years' imprisonment with labor.

This case, on petition by the prisoner, was brought under the review of the Court of Sudder Foujdaree Adawlut.

Minute by Mr. D. Greenhill:—"To make instigating or aiding criminal, the offence must either have been 'committed or attempted.' It was not committed. The robbery proposed having been of a house in the village of *Nurkhair*, whereas the robbery committed was in the village of Jamgaum. An 'attempt' is defined 'to be committed by some one of the circumstances specified as a definition of force, in the 3rd Clause of Section XXXVI. Regulation XIV. of 1827, having taken place, by the culprit having made use of words or actions evidently and *immediately* indicating an intention to resort to some of them.' I do not think the act of the prisoner comes within this definition, and in a case, from Rutnagiree of Crustna bin Suckshett, before the Court on the 13th of October 1835, the opinion of the Court seems to be in support of this view. I therefore am of opinion, the prisoner should be acquitted, but required to find security."

Vide Sec. XXXVIII. Regulation XIV. of 1827.

Minute by Mr. G. Giberne—"It is quite clear, that the prisoner endeavoured to instigate others, with himself, to commit a robbery at Nurkhair. The same night a robbery was committed at Jamgaum. Now although, it does not appear, that the robbery proposed was actually committed, yet it was certainly 'attempted,' under the definition of that term in Section XXXVIII. Regulation XIV. of 1827, for the culprit made use of words evidently indicating an intention to commit the gang robbery. He is therefore, in my opinion, convicted of instigating the offence attempted, under Clause 5, of Section I. of Regulation XIV. of 1827.

The Court differing in opinion, the case was referred to a third Judge.

Minute by Mr. G. W. Anderson, the Honorable the Chief Judge:—"The prisoner instigated the commission of a

1838
25th October.

MYPUTTEE WAKNACK'S case.

robbery, which did not take place, and so far as the evidence shews, was not attempted. I apprehend, therefore, he cannot be found guilty, as the words of the definition of the Regulation quoted run. The words used—the only indication of any attempt—were not followed by immediate action; and did not in fact instigate to the crime which was attempted or committed; for there is no evidence of attempt at robbery at Nurkhair, and in the commission of the robbery at Jamgaum, there is no evidence to show that the prisoner had part in it, or that it was in the contemplation or intention of the prisoner in his instigation to join in the robbery which took place at another village."

The majority of the votes being for an acquittal, the Court passed the following resolution:—"The Court finds that no attempt or act followed the expressed intention to instigate the Robbery; therefore under the Law laid down on the 13th of October 1835, in the case of Crustna bin Suckshett and others, that came from the Zillah of Rutnagiree, the sentence passed in this case must be annulled, and the prisoner discharged."

Vide the Court's Interpretation on Clause 5, Section I. Regulation XIV. of 1827, dated 25th of October 1838.

THE CASE

of

DAJEE WULLUD YEMAJEE AND

PUNDRINATH WULLUD YEMAJEE.

Charge—*Forgery*.

1838
24th December

The case of DAJEE WULLUD YEMAJEE, and another.

Individuals falsifying their books of accounts, and producing them as evidence in a Court of Justice with a fraudulent intent,

The prisoners Dajee and Pundrinath, Yemajee, being charged with Forgery, were brought to trial before the Session Court of Ahmednuggur, on the 11th of October 1838.—Plea, not guilty.

It appeared, that one Moteeram Marwarree had attached the house of one Dama, in execution of a Judicial Decree, but

1838
24th December

The case of DAJEE WULLUD YEMAJEE, and another.

held by the Sudder Foujdaree Adawlut, to have committed Forgery as defined in Cl. 1, Section XVII. Regulation XIV. of 1827.

that before the sale took place, the prisoners had asserted their interest in the house, in right of a previous Mortgage; and to establish their claim, the prisoners instituted a suit in the Principal Sudder Ameens' Court at Ahmednuggur, to release the property from attachment, producing in support of their claim a Mortgage Bond, duly attested, and also their Books of Accounts. The Principal Sudder Ameen, after investigation, non-suited the prisoners. The prisoners then appealed to the Assistant Judge, who, on examining the Books of Accounts, detected that an erasure and alteration* had been made in the prisoner's Rozkird or Day Book, in the account of the said Dama, by substituting for the word "ashe," the words "ghur gahanache ashe," by which it was made to appear, that the house in dispute had been mortgaged to the prisoners previously to the date of the Decree obtained by Moteeram Marwarree against Dama. The prisoners were therefore brought before the Magistrate on suspicion of having committed Forgery.

* See Interpretation on Regulation XIV. Section XVII. of 1827.

On the trial, Dama deposed, that he had mortgaged to the prisoner Dajee the house in dispute on the date specified in the Bond produced, and the attesting witnesses swore to its execution; but it was proved that the prisoners had never taken posession of the house, for Dama and his mother lived in it until attached at the instance of Moteeram. There were also other circumstances which rendered the authenticity of the Mortgage Bond doubtful.

The prisoners set up in defence, that the Mortgage Bond was genuine, but that the transaction had been in the first instance wrongly entered in the Day Book, and afterwards corrected by Pundrinath.

The Session Judge (H.H. Glass) was of opinion, that the Day Book had been fraudulently altered to make it correspond with the Mortgage Bond, which he held to be an entire fabrication for the purpose of defrauding Moteeram. The

* The alteration was very apparent, for the prisoners, in scratching out the words असे and substituting घर had forgotten to scratch out the matra, and made nonsense; the sentence running thus, घरे गाहाणाचे असे

Session Judge further considered, that it was extremely improbable that any person would (as stated by Dama) mortgage a good house for the trifling sum of Rupees 10, a debt incurred for some betelnuts supplied. The conduct of Moteeram was also, he remarked, very inconsistent, for no sooner was the alteration in the Rozkird discovered, than he petitioned the Assistant Judge to release the house from the attachment, as he had been paid the amount of his claim, thereby incurring the whole of the costs in the suit, although he had obtained a decree in his favor in the Lower Court, which was on the point of being affirmed; thus clearly proving, that the parties had entered into an agreement in order to prevent an investigation into the Forgery which had been committed. The Session Judge disbelieved the testimony of Dama, and the attesting witnesses to the bond, and considering the other evidence brought forward, supported a conviction for Forgery, sentenced each of the prisoners to suffer three years' imprisonment with hard labour, and then to be publicly disgraced.

On petition by the prisoners, this case came under the review of the Sudder Foujdaree Adawlut, when a doubt arose, whether a Merchant, falsifying his own accounts with intent to apply the same to a fraudulent purpose, commits Forgery? And upon these grounds, the case was submitted to a full Court, when the following minutes were read and recorded.

By the Hon'ble the Chief Judge G. W. Anderson:—"I come to this conclusion on the question of false entries in a man's own books—that where a person makes a false entry, knowingly, and for a fraudulent purpose, to the intent of injury of another party, and produces those books in evidence in a Court of Justice, to deceive that Court, that he comes within the Regulation, by the fraudulent application of that which is falsely written or falsely altered."

By Mr. Pyne (Acting 3rd Puisne Judge):—"As the question is raised, whether altering an account current with the intent to apply the same to a fraudulent purpose, constitutes Forgery, under the definition of that offence as laid down in Regulation XIV. Section XVII. of 1827, I am of opinion,

1838

The case of DAJEE WULLUD YEMAJEE, and another.

on the principles of English law, that it is not; as I cannot consider a Document* or written Instrument in the light of accounts; for though I can find nothing distinct in the Books I have consulted, still I gather by implication, that the alteration of accounts is not considered Forgery." The Puisne Judge then concluded by making several quotations from Russel on Crime (Volume II. Pages 288 and 349), in support of this opinion.

By Mr. Greenhill:—"There may be doubt, whether a person's own books produced in his own cause can be considered an instrument under the Regulations. There was a case lately decided, in which a trader fabricated a false account in his own books to be produced as evidence against *another party* in a criminal case. It was ruled in May 1832, that a Talookdar, altering Treasury accounts, commits Forgery; but there is a distinction between both of these cases and the present. They shew, however, that *books* of *accounts* are, or may be, considered *instruments*, and therefore if there be no special reason for thinking those decisions erroneous, the only point to be considered in the case before us, is whether the account was fabricated, and produced for a fraudulent purpose." The Puisne Judge, after remarking that he was not bound to follow the English Law, which he did not consider applicable to the present case, concluded his minute by stating—"It is the practice of our Courts to receive a Merchant's books as evidence in his own favor, and therefore I am disposed, after a full discussion of the question, to view the fabrication of what is recognized as evidence, as Forgery, and punishable as such, when the fraud is committed or attempted by the means thereof, as the use of a forged Bond or other instrument as evidence, would be."

It therefore being ruled by the majority of the Court, that a Merchant falsifying his own books, and producing those books in a Court of Justice to deceive that Court, and to the injury of another party, was amenable to Regulation XIV. of

* Doctor Johnson defines a Document to be "*a precept, a written evidence, a record,*" and of this nature accounts produced in evidence, would appear to be.

1827, Section XVII. the next point was to determine, whether the prisoners, in the present case, had been guilty of Forgery with intent to defraud. The Court considering the evidence to be insufficient for conviction, resolved to annul the sentence, passed by the Session Judge, and directed the prisoners to be discharged.

1838

The case of DAJEE WULLUD YEMAJEE, and another.

THE CASE

of

GUNGA, WIDOW OF BAPPOO BHIMSING.

Charge—*Murder.*

1839
3rd January

GUNGA's case. The desertion of a child by its mother, does not amount to murder, nor even an attempt to murder, unless the circumstances attending the desertion shew that it is done with the intention of causing its death.

This prisoner was indicted for infanticide before the Session Judge of Ahmedabad, on the 28th day of November 1838. —Plea, not guilty.

The first witness called for the prosecution was Dewchund, who deposed, that about 5 P. M. on the 31st of October 1838, he and his companion Jooza were walking across an open spot of ground, belonging to Samuldass Kimchund, in the town of Kaira, when their attention was attracted by hearing the feeble cries of a child. On going to the place from which the sound issued, they found a child covered over with loose sand, and immediately called to their assistance, one Jaffur, a Mussulman Peon, who took up the child, which appeared very recently born, and not at all injured. Jaffur confirmed this statement, and added, that, by the direction of Dewchund and Jooza, he gave information of the discovery of the child to the Foujdar; that he took care of the child for two days, and fed it with milk; that on the 2nd of November 1838, he took the child to the Magistrate's Kutcherry, where he met the prisoner Gunga, who acknowledged the child to be hers, and he therefore gave it to her. The child was then in perfect health. He heard, that the child died the following day. The Jury, who examined the body,

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GUNGA'S case.

was of opinion, that the child had died, not from the exposure, which appeared to have been momentary, but from being deprived of its mother's milk, through the neglect of the prisoner, so shortly after its birth.

The prisoner on her trial admitted, that on the afternoon of the 31st of October 1838, she gave birth to an illegitimate child, which she placed on the ground near Samuldass Kimchund's house, and that she sprinkled sand over the child to conceal it, but did not know who took the child away,

The Session Judge (B. Hutt) was of opinion, that the prisoner, by wilfully deserting her offspring, had caused its death, and therefore convicted her of murder, and sentenced her, under a consideration of all the circumstances of the case, to be imprisoned for the term of her natural life, subject to the confirmation of the Superior Court.

By the Court of Sudder Foujdaree Adawlut.

Mr. J. Pyne, Officiating Second Puisne Judge :—"The desertion of her offspring by the prisoner, does not amount to murder, nor even an attempt to commit murder, unless it be shown that such circumstances attended the concealment of the child, as evidently tended to cause its death. That it was not the intention of the mother to deprive the child of life, may be inferred from her having so placed it, and covered it with earth, that it was capable of sustaining life for some time after she left it. Had her intention been its destruction, it might have been effected at its tender age in various ways, and its remains afterwards concealed in the earth; or, the earth, instead of being lightly strewed over it, so that it could breathe, might have been pressed down upon it with such force as to have interrupted respiration—an act of less difficult accomplishment, than so to adjust the earth above it, that it received no injury thereby. It is stated by Jaffur in his evidence, that the child had sustained no injury, and that it was vigorous and sound, when he took it from its place of concealment. The spot where the concealment took place was not secluded, but inhabited, and it is in evidence, that four women lived in the immediate neighbourhood. It might therefore have been in the contemplation of the mother, that

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GUNGA'S case.

the child would by its cries arrest the attention of the neighbours, and thus be discovered,—which in fact took place. The intention, therefore, on the part of the mother, to compass the death of the child, is not so clear, though the abandonment of it is sufficiently established. Had the child not been rescued, but died where it was concealed, I should have had no difficulty in deciding that it was murder; but since it was apparently placed, in the situation in which it was found, with no obvious intention of sacrificing its life, and since by its being taken away,—though such might have been the desire of the mother that it should be,—she was prevented from giving it sustenance or regaining it, I should be inclined to acquit her of a deliberate attempt to cause the death of her child; but since death did take place a few days after, and this death was consequent, in the opinion of the Inquest, to the culpable neglect of the mother,—an opinion which carries on the face of it probability almost amounting to certainty,—I would define the crime to be that of Culpable Homicide, and sentence her to the punishment provided for that offence in the Regulations, viz. ten years' imprisonment, with labor befitting her sex."

Mr. D. Greenhill, Fourth Puisne Judge:—"I think the prisoner exposed the child, not caring whether it was rescued or was left to die; but it was immediately discovered and taken care of, and before it suffered any injury, it was delivered over to the prisoner in perfect health. I do not see, therefore, any reason to suppose that the child's death was caused by the momentary exposure, although it may have been by the subsequent neglect of the mother, of which there is no proof. Under this view I cannot find her guilty of Murder or Culpable Homicide, and I am not aware of any other provision of the Code that can meet the case, but Clause 1, para. 7, of Section I. Regulation XIV. of 1827."

Upon this difference of opinion, the Court resolved to refer the case to a third Judge.

The Honorable the Chief Judge, (G. W. Anderson) being called in, recorded the following minute:—"I am of opinion, that the evidence does not show that the neglect of the mother

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GUNGA'S case.

was the actual cause of death, therefore I do not think the conviction on the charge of Murder can be sustained. I therefore think, that the prisoner should be acquitted of the charge, and the sentence be annulled."

The Court finally resolved to annul the sentence passed on the prisoner Gunga, and directed her discharge.

THE CASE

of

BUNNA HURREE, AND BAJEE, WIDOW OF JALLAH JUGGAJEE.

1839
3rd January

Charge—*Murder*.

BAJEE'S case. The female prisoner convicted of the murder of her husband, on the violent presumptions of the case. It being proved, that she was found alone in her house with the corpse of her husband, on the morning of the 26th of September 1838; that the house, had only one door, which was fastened inside, & that the wounds on the body of the deceased were of such a nature that they could not have been self-inflicted. Sentence, imprisonment for life.

These prisoners were tried for murder, on the 21st day of November 1838, at Ahmedabad.

The Session Judge (B. Hutt), in his finding, recorded a summary of the case to the following effect :—It appears that the deceased Jallah Juggajee, and his wife, the female prisoner, were sleeping together, on the night of the 25th of September 1838, in their house, to which there is but one entrance ; that on the following morning before day-light the deceased's brother Jorajee, who lives near, hearing the female prisoner crying, went to the spot, and called for admission, the door being fastened from inside; not being admitted, and supposing, from her cries, that she was being beaten by her husband, he forced the door open, and found that his brother had been murdered. The prisoner Bajee, being the only person present, and being smeared with blood, was naturally suspected, and taken to the Chowree, where a Karkoon having tied her hands together with a rope, she agreed to confess, and gave a statement implicating Bunna, on whom suspicion had already fallen, from his known intimacy with her. It does not seem that this confession was obtained by violence, nor was she, at the time she gave it, tied ; but it is to be regretted, that the agreement

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GUNGA'S case.

to make it should have been been obtained, while secured as described. This, however, is not the only nor even the principal evidence against her. The wounds on her own person, though slight, are sufficient proof that she was engaged in the commission of the murder, but it does not seem probable that she was the only person concerned. If then any other person was concerned, as seems likely, she must have shut the door after him on his retreating, and allowed him time to get clearly away before she attempted to give the alarm, which further shows her participation in it. If she did not commit the murder herself, the number of persons that assembled, before the authorities could cause an investigation to be made, completely obliterated all foot-marks by which the other might have been traced. The other prisoner Bunna, was immediately suspected, and sent for from the fields, where he had been during the night; but he denied all knowledge of the murder then, as he has continued to do throughout; and beyond the suspicion arising from his intimacy with the female prisoner, and her accusation, there is nothing to prove the charge against him; he is therefore acquitted and discharged. The prisoner Bajee is, however, on the above evidence, fully convicted of murder, and sentenced, subject to the confirmation of the Superior Court, to be imprisoned during the period of her natural life, under Cl. 4, Section XXVI. of Regulation XIV. of 1827.

The confession of one prisoner is not evidence against another.

By the Sudder Foujdaree Adawlut, Mr. J. Pyne Third Puisne Judge:—"The prisoner, in her confession, accuses one Bunna Hurree of having perpetrated the act; and states that she at the time attempted to prevent him, and received wounds on her hand and leg. It appears from the evidence of the witnesses, that no other person lives in the house, and that there is only one entrance; that on going to the house in the morning, the door was found fastened inside, and that the prisoner Bajee was the only person there; that she was smeared with blood, and that bloody prints of a foot were observable in several places in the room. The wounds on the person of the deceased could not have been self-inflicted*, as

* It was proved by the Report of the Jury, who held an Inquest on the body

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GUNGA'S case.

the throat was cut, and the entrails protruded from a wound given in the belly. On Jorajee's coming to the house in the morning, the prisoner Bajee stated, that the deceased had destroyed himself,—which is quite at variance with the statement in her confession. There is no reason to doubt the genuineness of her confession, as she adhered to it before the Magistrate. The circumstantial facts are so strong against her, that taken in connection with the confession, they leave no reasonable doubt of her guilt. I would therefore confirm the sentence of imprisonment for life.

"With respect to the Kárkoon, who tied the prisoner's hands together, and then attached the string to a nail in the wall, this conduct is deserving of high reprehension, and he should, I think, be recommended to be dismissed from his employment, as an example to others; as any attempt to coerce a prisoner to confess, may be productive of the most serious consequences."

Mr. D. Greenhill, Fourth Puisne Judge:—"I do not think the prisoner committed the deed with her own hand: the fact of herself having been wounded, and what I believe to be the case, that there is not an instance, or remarkably few instances, of a woman in this country making use of a sword for such a purpose, impresses on my mind a strong belief of the truth of her story, so far as it goes to shew, that she tried to prevent it, although the deed was previously in contemplation. This may have been the result of momentary remorse, but the atrocity of the crime becomes lessened, in my estimation, by the very attempt, even if it were slight, to stop the commission of the deed. I cannot, therefore, find her guilty of actual murder, but I hold her to be guilty of concealment before and after the fact; and under all the circumstances, would sentence her to imprisonment not exceeding fourteen years."

The Court differing in opinion, the case was referred to the Honorable the Chief Judge (G. W. Anderson), who concurred in the conviction and sentence passed by the Session Judge; accordingly the same was confirmed.

of the deceased, that the wounds from their nature could not have been self-inflicted.

THE CASE

of

SULTAN DULLAH, and others.

Charge—*Murder.*

1839
4th September

The case of SULTAN DULLAH and others.

In this case the prisoners Sultan Dullah & Rugah Sultan, supposing one Koobèr had stolen their calf, accused him of the theft, and demanded restitution; a quarrel ensued, & Sultan Dullah struck Koobèr a slight blow on the head with the hilt of his sheathed sword; the next moment Rugah Sultan drew his sword, and mortally wounded Koober.

Held by the Sudder Foujdaree Adawlut, that the conviction of Rugah Sultan for murder was correct, but that Sultan Dullah was guilty only of a common assault.

Rugah Sultan sentenced to transportation for life, and Sultan Dullah to six months' imprisonment.

The prisoners, Sultan Dullah, and his sons, Rugha Sultan, Hempta Sultan, and Rugha Natha, were arraigned at the bar of the Session Court of Ahmedabad, on the 23rd day of July 1839, on an indictment for murder.—Plea, not guilty.

From the record of the proceedings it appeared, that the prisoners had lost a calf, which they supposed one Koobèr had stolen, and in consequence they proceeded about 5 P. M. on the 29th day of March 1839, to the house of one Kalla, in the village of Nepalpoor, and there, as they expected, found Koobèr. They immediately accused him of stealing the calf, and demanded restitution. Koobèr denied the accusation, and a dispute ensued; both parties began to abuse each other grossly, and from words they proceeded to blows, when Sultan Dullah struck Koobèr a slight blow on the head with the hilt of his sheathed sword; but the prisoner Rugha Sultan, unable to controul his passion at Koobèr's repeated denial of the theft, drew his sword, and inflicted a very severe wound on Koobèr's left side, of which wound Koobèr died five days afterwards. The evidence against the other two prisoners, Hempta Sultan and Rugha Natha, was very inconclusive; some of the witnesses even denied that they were present, while others stated, that although they were present, they took no part in the assault, and were unarmed.

The Session Judge (B. Hutt), considering the charge against the prisoners Sultan Dullah and Rugah Sultan proved, sentenced them severally to be transported for the terms of their natural lives, subject to the confirmation of the Superior Court; but under the peculiar circumstances of the case, he recommended the prisoner Sultan Dullah to mercy, and in the absence of proof, acquitted the other two prisoners.

On the case being laid before the Sudder Foujdaree

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The case of SULTAN DULLAH and others.

Adawlut, a question arose, whether the prisoner, Sultan Dullah, should be convicted of Murder or common Assault.

Minute by Mr. Pyne:—"I am of opinion, that to subject the prisoner to the punishment prescribed for Murder, he must by the code have been aiding in the offence, by which I understand, that he must have been either actively engaged in assisting at the murder, and with clear intention of committing it, or have conspired to prevent others from affording aid, while his associates perpetrated it. The object with which the prisoner Sultan Dullah went to the house of the deceased, was to remonstrate with him regarding the loss of a calf: there is nothing to show, that in seeking this interview, he had any unlawful purpose to prosecute, or that he had entered into any design with the other prisoner Rugah Sultan, who accompanied him, to commit murder or other illegal act. Proceeding, however, in the course of wrangling from high words to blows, the prisoner Sultan Dullah struck the deceased with the hilt of his sword a slight blow on the head, and the next moment his associate drew his sword, and inflicted a mortal wound. That the prisoner Rugah Sultan has been guilty of murder, there is no question, but that the prisoner Sultan Dullah is involved in his guilt, by actually aiding in the murder, cannot, I think, be maintained, as the intention on his part in striking with the hilt of his sword, was evidently not directed against life; nor was the purpose of the visit unlawful, though an unlawful act, apparently unpremeditated, had been committed before the murder took place, by the assault, trifling as it was. By the commission of this unlawful act, viz. assault, the prisoner has rendered himself liable to punishment; but I do not think he can be convicted of murder, considering all the circumstances of the case, with any greater degree of propriety, than a person committing an ordinary petty assault could be considered a principal in murder, because a stranger came up, and deliberately shot the person assaulted. Under this view of the case, I would convict the prisoner Sultan Dullah of assault, and sentence him to six months' imprisonment with hard labor, and confirm the sentence against Rugah Sultan."

Mr. G. Giberne:—"I consider the conviction of Rugah

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The case of SULTAN DULLAH and others.

Sultan correct, and the sentence I would confirm. With regard to Sultan Dullah, I consider that there are circumstances sufficiently extenuating to divest his act of so much criminality as would constitute Murder, and under Section XXVII. of Regulation XIV. of 1827, would convict him of Culpable Homicide."

Mr. D. Greenhill:—"I do not think Sultan Dullah is guilty of murder, but of an assault only. He did not accompany Rugah Sultan with any criminal design, as far as appears, but merely to upbraid the deceased for having stolen their calf. In a moment of anger, during the dispute, Sultan Dullah gave him a slight blow on the head with the hilt of his sword, so slight that the smallest mark only was made, but the other prisoner drew his sword and killed the deceased. Sultan Dullah did not draw his sword at all, and did not strike the deceased after the other prisoner cut him down. I consider Sultan Dullah as guilty only of an assault, and that he should be acquitted of the murder. The other prisoner, Rugah Sultan, has been rightly found guilty of Murder."

According to the majority of voices, the Court resolved to confirm the finding and sentence on the prisoner Rugah Sultan, and to convict Sultan Dullah of Assault, and to sentence him to six months' imprisonment with labor.

THE CASE

of

RUTTUNJEE HURREEBHAEE, and others.

Charge—*Conspiracy*.

1840
11th February

The case of RUTTUNJEE HURREEBHAEE and others.

The concealment of conspiracy after the fact, not a penal offence.

The prisoners, Ruttunjee, Jumnadass, Jykishundass, and Baee Goree, were indicted for conspiracy, before the Session Judge of Surat, on the 18th day of November 1839, in having combined to injure and impoverish one Dwarkadass, the prosecutor, a Merchant residing in the city of Surat, by obtain-

1840

The case of RUTTUNJEE HURREEBHAEE and others.

ing, under false pretences, the sum of one hundred and seventy-seven Solakee Rupees.—Plea, not guilty.

It appeared that the prisoner Ruttunjee, by previous agreement with the prisoner Jumnadass, repaired, on the morning of the 16th of September 1839, to the prosecutor's shop, and stated that a friend of his, a Shroff, was desirous of exchanging some Company's Rupees for Solakee Rupees, and that he would give one Rupee per cent. as the difference of exchange. The prosecutor agreeing to the transaction, tied up in a bag as many Solakee Rupees as he had,—in all one hundred and seventy-seven,—and accompanied the prisoner Ruttunjee to the house of one Wullubh, where he was introduced to the prisoners Jumnadass and Jykishundass; the former, personating a Shroff, was richly attired in the dress of a person of that profession. The prosecutor, relying on the respectable appearance of the prisoner Jumnadass, counted out, and gave to him, one hundred and seventy-seven Solakee Rupees. These Jumnadass gave to Ruttunjee, when both prisoners left the room, saying they would fetch the exchange Rupees. Prosecutor remained in conversation with the third prisoner Jykishundass nearly an hour, but as neither Jumnadass nor Ruttunjee returned, Jykishundass advised him to call again in the afternoon. Prosecutor accordingly called at Wullubh's house about 5 P. M. and saw Ruttunjee, who put him off, and told him to come again in a day or two. The prosecutor, finding he had been imposed upon, went to the Kotwal, and laid information against the prisoners; whereupon Wullubh's house was searched, and eighty of the Solakee Rupees were there found concealed in a brass pot. These Rupees the prisoner Baee Goree confessed having received from the prisoner Jumnadass, and that she concealed them in the brass pot, where they were found. The Rupees were also fully identified by the prosecutor and others, by certain marks on them. The other three prisoners, in their defence, made a total denial of the charge preferred against them.

Sec. II. Reg. XVII. of 1828.

The Session Judge (E. L. Elliot) convicted the prisoners Ruttunjee and Jumnadass of conspiracy, and sentenced them each to suffer two years' imprisonment, and on release to find

1840

The case of RUTTUNJEE HURREEBHAEE and others.

Sec. II. Reg. XVII. of 1828, and Cl. 5. Sec. I. of Reg. XIV. of 1827.

two securities in Rupees 1,000 each for their future good behaviour, for a period of two years. The Session Judge also convicted the prisoner Baee Goree as an accessary with concealment after the fact of the above conspiracy, and sentenced her to six months' imprisonment; but acquitted the prisoner Jykishundass, in the absence of sufficient proof, binding him over to find security for his future good conduct.

The Judges of the Sudder Foujdaree Adawlut, noticing in the monthly Criminal Return of the Session Judge of Surat, an illegality in respect to the sentence passed upon the prisoner Baee Goree, ordered that functionary to certify his proceedings in this case. Whereupon the Court (present A. Bell, and D. Greenhill, Puisne Judges,) held, that the prisoner Baee Goree must be acquitted and discharged, as concealment of conspiracy *after the fact* was not a penal offence, under the provisions of Clause 5, Section I. of Regulation XIV. of 1827, which limited the punishment of concealment *after the fact* to treason, rebellion, murder, and gang robbery.

THE CASE

of

SUCARAM WULLUD RAMCHUNDER DHOKLAY.

Charge—*Assault.*

1840
18th May

SUCCARAM WD. RAMCHUNDER'S case

In this case, the prisoner was convicted by the Session Judge of a serious assault, and sentenced to suffer fourteen years' imprisonment with labor. Held by the Sudder Foujdaree Adawlut, that the fact of the

This prisoner was arraigned before the Session Judge of Poona, on the 21st day of April 1840, on a charge of seriously assaulting one Hussum with a sword, and thereby wounding him in six different places.—Plea, not guilty.

It appeared from the evidence, that the prisoner was a resident of Jooneer, in the Poona Zillah, and that he owed money to a Sowcar of that town by name Mutteh Khan; that in consequence of the frequent demands of Mutteh Khan for

1840

SACCARAM WD. RAMCHUNDER'S case.

prisoner being at the time he committed the assault under illegal restraint was a circumstance of extenuation. Sentence accordingly mitigated to four years' imprisonment without labor.

payment, the prisoner absconded; upon which, the former despatched Hussum and Ali Beg in pursuit, with orders to take the prisoner into custody, and to bring him back to Jooneer. These persons overtook the prisoner on the evening of the 8th of April 1840, at Brahmin-wara, and immediately seized him, and placed him in confinement in the Chowree. It was also proved, that Hussum and Ali Beg endeavoured to extort money from the prisoner, under the pretence that they would use their influence with the Sowcar to obtain his release. At night, Hussum and Ali Beg slept in the Chowree beside the prisoner; when the prisoner suddenly started up, and seizing a sword, inflicted upon Hussum, who was nearest to him, six wounds, and then attempted to kill himself. The wounds were of a very serious nature, insomuch as to render it very doubtful whether Hussum would ever regain the use of his right hand and leg.

The prisoner in his defence simply denied the charge preferred against him.

The Session Judge (R. Mills), upon the evidence adduced, found the prisoner guilty, and sentenced him to be imprisoned for the term of fourteen years with hard labour, under the provisions of Cl. 1, Sec. XXIX. Regulation XIV. of 1827, subject, however, to the confirmation of the superior tribunal.

By the Court of Sudder Foujdaree Adawlut. Mr. A. Bell: —"There can, I think, be no doubt, that the wounding was inflicted by the prisoner. His being, however, at the time under illegal restraint, is a circumstance of extenuation, and one which the Court must take into consideration; for if creditors are allowed to recover their real demands in the manner pursued by the employers of the witnesses, Hussum and Ali Beg, such a procedure would be open to very great abuse. The prisoner has subjected himself to punishment, but which in my opinion should be far short of the sentence passed."

Mr. G. Giberne:—"I concur in the conviction, but am of opinion, that under a consideration of all the circumstances of the case, the punishment should be ten years' imprisonment with hard labour."

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SACCARAM WD. RAMCHUNDER'S case.

The case was then referred to a Third Judge (S. Marriott), on the question of Sentence, and the Court finally resolved to mitigate the sentence to four years' imprisonment without labour.

THE CASE

of

TULWAR DOORGAH BIN DOORGAH, and two others.

Charge—*Permitting an escape from Custody.*

1840
25th May.

The case of TULWAR DOORGAH and others.

Wilfully permitting an escape from custody is punishable under Sec. III. of Regulation V. of 1831. But if the escape be occasioned by carelessness or neglect of duty, the officer is only amenable to Sec. VIII. of Regulation XII. of 1827, for misconduct.

The prisoners, Tulwar Doorgah, Barkee Runga, and Tulwar Hoonga, Ruckwaldars, were placed at the bar of the Session Court of Darwar, on the 29th day of February 1840, on an indictment for permitting the escape of one Jeengar Soobah from legal custody.—Plea, guilty.

The facts of this case were briefly these:—Jeenga Soobah had been apprehended on the 11th of January 1840, on a charge of theft, and placed in the custody of the three prisoners, in the Mamlutdar's chowkee at Masoor, Talooka Kadè; but the three prisoners, while on guard, fell asleep, and Jeenga Soobah, availing himself of the opportunity, escaped. The prisoners on awaking and discovering the escape, immediately went in pursuit, and by their exertions, Jeenga Soobah was again apprehended.

The Session Judge (J. A. Shaw) convicted the prisoners on their own confessions, and sentenced each of them to five months' imprisonment with labor, under Regulation V. Section III. of 1831.

The Judicial Commissioner for the Southern Marratta Country (D. Greenhill), while on circuit, reviewed this case, and considered that the Session Judge had mistaken the meaning of the Regulation quoted, in sentencing the prisoners under a Law which ought only to be applied to persons who designedly and wilfully permit escapes from custody. The Ju-

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The case of TULWAR DOORGAH and others.

dicial Commissioner, therefore, submitted the proceedings in the case for the decision of the Judges of the Sudder Foujdaree Adawlut, recording at the same time his opinion, that as the prisoners in the present case had been guilty only of neglect of duty, the provisions of Regulation V. of 1831, were inapplicable, and therefore that the sentence passed should be annulled.

When the question was considered by a full Court, the Judges present were of the following opinions.

Mr. S. Marriott, Puisne Judge, concurred in opinion with the Judicial Commissioner for the Southern Marratta Country.

Minute by Mr. George Giberne, Puisne Judge:—"Three Ruckwaldars, convicted of permitting a prisoner to escape, and sentenced to five months' imprisonment with hard labor. These Ruckwaldars, it appears, slept, and the prisoner escaped. They have shewn great carelessness in their duty; but I do not think any wilful permission was given to the prisoners to escape, and it is clear from their subsequent exertions and success in apprehending the prisoner, that they did not intend him to escape. Regulation V. of 1831, Section III. makes 'permitting or aiding in escapes' penal. But I consider the meaning and spirit of this is, that the permitting shall be wilful. If otherwise, it might be punishable, under Sec. VIII. of Regulation XII. of 1827, as neglect of duty; which in this case is the fact."

Mr. Alexander Bell, Acting Puisne Judge, dissented from his colleagues, apprehending the Clause, Section, and Regulation, quoted by Mr. Giberne in his minute, to apply to acts of misconduct generally: but for the punishment of permitting escape from custody, he considered a specific Regulation to exist, under which the prisoners had rendered themselves liable.

The majority of the Court having concurred with the Judicial Commissioner* for the Southern Marratta Country, re-

* The recorded opinion of the Judicial Commissioner in this case was considered a vote agreeably to Cl. 5, Section IX. of Regulation II. of 1827.

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The case of TULWAR DOORGAH and others.

solved to declare, that aiding or permitting an escape from custody must be wilful to render a party liable to the provisions of Section III. of Regulation V. of 1831. And under this interpretation of the Law, the Court further determined to annul the sentence passed by the Session Judge on the prisoners, leaving it to the Magistrate to take such steps as he might deem proper for the prosecution of the prisoners for neglect of duty under Section VIII. of Regulation XII. of 1827.

THE CASE

of

GHARROO BIN DEWJEE.

Charge—*Returning from Transportation without a Pardon.*

1840
15th October

GHARROO BIN DEWJEE'S case.

A prisoner, who had been sentenced by the Political Agent at Sawunt Warree, under the orders of the Honorable the Governor in Council of Bombay, to be transported for life, returned from transportation without a pardon, and upon being apprehended, he was tried by the Session Judge of the Konkun, and again sentened to be transported. Held by the Sudder Foujdaree Adawlut, that this latter sentence was illegal, the Session Court never having had jurisdiction in the matter, and the authority by whom the orginal sentence

This trial came on before the Session Court of the Konkun, on the 26th day of September 1840.

It appeared from the evidence, that the prisoner Gharroo bin Dewjee, had been convicted of Treason by R. Spooner, Esquire, the Political Agent at Sawunt Warree, and sentenced, under the authority of the Honorable the Governor in Council of Bombay, to be transported beyond seas for the term of his natural life. That in execution of his warrant, which bore date the 20th of September 1839, he was placed in custody on board the Bark Virginia, bound for Singapoor, which vessel sailed from Bombay in the beginning of December following, having on board thirty-five other convicts, under sentence of transportation. Some of these convicts, shortly after leaving Bombay, rebelled, murdered the Captain and the Mate of the Virginia, overpowered their guards, and then ran the vessel ashore near Mangalore, and thus all the convicts were enabled to effect their escape. Several of these

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GHARROO BIN DEWJEE'S case.

was passed not being recognized in the Code of Regulations.

convicts* were subsequently apprehended, and among others, the prisoner, near Rutnagiree; but there being no evidence to shew that the prisoner was in any way connected with the murder of the Captain or the Mate of the Bark Virginia, he was forwarded to Tannah to take his trial on the present charge.

The prisoner, on being fully identified, was convicted by the Session Judge (H. Brown) of returning from transportation without a pardon, and under the provisions of Clause 2, Section V. of Regulation XIV. of 1827, was again sentenced to be transported.

On the case coming before the Court of Sudder Foujdaree Adawlut for confirmation, the Judges (present Saville Marriott, George Giberne, and David Greenhill, Esquires) were unanimous in passing the following resolution:—"The prisoner, it appears from the proceedings, was sentenced by the Political Agent in the Sawunt Warree state, under orders from the Honorable the Governor in Council. The Court never having had jurisdiction over the case, and the authority by whom the sentence is said to have been passed, not being recognized by the Regulations, the Courts of the Honorable the East India Company cannot try a person on any charge connected with it, except the offence charged against him were committed within the Court's jurisdiction. No offence having been committed by the prisoner within its jurisdiction, the trial is illegal, and must be quashed. The Session Judge is also to be instructed to report these proceedings to Government, for such orders as may seem to his Honor in Council requisite."

* Of whom six, on conviction of murder, were executed.

THE CASE

of

WITTOO WULUD BAPPOO, Simpee.

Charge—*Murder.*

1841
13th April.

WITTOO WULUD BAPPOO'S case.

It is not competent to an Assistant Session Judge to submit a case for the comfirmation of the Sudder Foujdaree Adawlut with the letter required by Clause 2, Section XXIII. Regulation XIII. of 1827, it being therein enacted that every such case shall be accompanied by a letter from the *Session Judge*, containing any remarks, explanation, or opinion, which the Session Judge may consider it expedient to introduce.

The dying declaration of a person if duly attested is admissible as evidence, although not taken in the presence of the prisoner.

This prisoner was tried for murder, on the 5th day of February 1841, before the Session Judge of Ahmednuggur, holding a half yearly Sessions at Dhoolia for the Province of Khandesh.—Plea, not guilty.

It was proved by the evidence of several witnesses, among whom was the Police Patell of Fuckundah, the place where the murder was committed, that about 9 A. M. on the 1st of November 1840, the prisoner came to the village chowree in a state of great excitement, brandishing a blood-stained sword, and crying out that he had killed his wife, because she was an adultress; that he was immediately seized and placed in confinement at the chowree in the custody of one Ramsing, to whom he also confessed his guilt; that after securing the prisoner, the Police Patell and others repaired to the prisoner's house, near to which, in a neighbour's verandah, they found his wife Bheemee lying senseless, and bleeding from five wounds. Bheemee was then removed to her own house, and about noon, when she had rallied and become sensible, her deposition was taken in the presence of the aforesaid Police Patell, and other witnesses. In this deposition, Bheemee declared, that on the morning of the 1st of November she was baking some bread, when her husband, the prisoner, came home, and began to abuse her because it was not ready; she abused him in return, upon which he flew into a violent passion, cut her nose and ear with a dagger, and then stabbed her twice in the stomach; that she endeavoured to escape, but the prisoner snatching up a sword, followed her, and inflicted with it a very severe wound on her left side; that she managed to reach a neighbour's verandah, where from loss of blood she fell down insensible. This deposition was duly attested by witnesses, but was not taken in the presence

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WITTOO WULUD BAPPOO'S case.

of the prisoner. About 2 P. M. on the same day Bheemee died of her wounds, declaring in her last moments, that her husband had killed her. The Jury who examined the deceased's body were clearly of opinion, from the nature of the wounds, that they could not have been self-inflicted, and upon the evidence brought forward at the Inquest returned a verdict of Murder against the prisoner.

The prisoner in his defence stated, that on the 31st of October 1840, he had detected one Chintamun with his wife in the act of adultery, whereupon he was much enraged, and scolded her; that on the following morning, while he was seated outside his house, he heard his wife screaming, and on running to see what was the matter, he found that she had stabbed herself in two places in the stomach; that he drew a dagger from one of the wounds, and picking up a sword which was lying beside her, he went to the village chowree, and told the Patell and others, that his wife had killed herself; but these persons declaring him to be the murderer, seized him, and put him in custody. The prisoner further urged, that the whole of the witnesses had conspired against him, and that the evidence given by his wife before the Patell was false, but as it was not taken in his presence, he had no opportunity of refuting it.

The Session Judge (H. H. Glass) was of opinion, that the guilt of the prisoner was fully proved from the evidence adduced on the part of the prosecution, which evidence was corroborated by the direct testimony of the deceased as contained in her dying declaration, and by the confession of the prisoner on his being apprehended. The Session Judge further considered, that the prisoner after having detected his wife in the act of adultery had meditated her death, and that on the following morning having found a pretext of quarrel he had stabbed and wounded her as described, and was therefore guilty of a deliberate murder. The Session Judge, therefore, sentenced the prisoner under the provisions of Clause 4, Section XXVI. Regulation XIV. of 1827, to suffer death, subject to the confirmation of the Sudder Foujdaree Adawlut.

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WITTOO WULUD BAPPOO'S case.

By the Sudder Foujdaree Adawlut. The Court (present S. Marriot, A Bell, G. Giberne, and D. Greenhill,) noticing that this case had been forwarded to the Superior Court for confirmation, accompanied by a letter from the Acting Assistant Session Judge, instead of by the Session Judge himself, as required by Regulation XIII. Section XXIII. Clause 2, passed the following resolution: "The proceedings in this case have been sent up accompanied by a letter from the Acting Assistant Session Judge at Ahmednuggur, in the absence of the Session Judge on circuit. This is an irregularity much to be regretted, and the more so as it occurs in a case involving capital punishment. The Law (Regulation XIII. Section XXIII. Clause 2, of 1827) most properly requires, that cases submitted for the confirmation of the Sudder Foujdaree Adawlut shall be accompanied by a letter from the Session Judge 'containing any remarks, explanation, or opinion, which he may consider it expedient to introduce,' and though a case may be such as to require no remark in that mode, still that fact will not supersede the necessity of the letter required as above. The case is, therefore, returned to the Session Judge for completion on the above point, and the Court has every reliance upon the Session Judge's attention to guard against a similar omission in future."

This irregularity being rectified, the Court on resuming consideration of the case fully concurred in the finding and sentence of the Session Judge, and therefore confirmed the same, and issued a warrant for the prisoner's execution.

THE CASE

of

SOPANNAH BIN KALLAJEE.

Charge—*Perjury.*

1841
15th September.

The case of SOPANNAH BIN KALLAJEE.

In this case the prisoner personating his brother, swore to the truth of a petition, signed by him in his brother's name. Held by the Sudder Foujdaree Adawlut, that this offence involved both Perjury and Forgery, and that the sentence passed by the Session Judge on a conviction for Perjury was correct.

This prisoner was tried before the Session Court of Poonah, on the 8th day of July 1841, for Wilful Perjury.

It was clearly established by the evidence, that on the 20th of May 1841, the prisoner appeared before the Senior Assistant Judge at Sholapoor, as Plaintiff in a suit instituted by one Ramchunder Kallojee against one Trimbuck Shamraj, and presented a Durkhast signed Ramchunder Kallojee, alleging that the Defendant Trimbuck Shamraj was about to abscond, and praying that his property might be attached. The prisoner being required to swear to the truth of the petition as provided by Section VIII. Regulation IV. of 1827, did so under the name of Ramchunder Kallojee, and in the same name made solemn affirmation on entering into the usual bond to answer for any unnecessary injury arising from the attachment. Whereupon the prisoner obtained the requisite order for the attachment. It was subsequently ascertained, that the prisoner's name was Sopannah bin Kallojee, and not Ramchunder bin Kallojee, whom he had personated. The Magistrate therefore committed the prisoner for trial on the present charge.

The Sheristadar of the Sholapoor Court deposed to having administered the solemn affirmation to the prisoner in the presence of the Senior Assistant Judge; and two other witnesses to their having heard him take the same under the name of Ramchunder bin Kallojee.

The prisoner admitted that Ramchunder bin Kallojee was his brother's name, and that his own was Sopannah bin Kallojee.

Regulation XIV. Section XVI. Clause 2, of 1827.

The Session Judge (Richard Mills) convicted the prisoner of Wilful Perjury, and sentenced him to one year's imprisonment with hard labour.

1841

The case of SOPANNAH BIN KÁLLAJEE.

On the case coming under the review of the Sudder Foujdaree Adawlut by Petition from the prisoner, a discussion arose whether this was not a case of Forgery, rather than Perjury, and on the question being referred to a full Court (present Messrs. Marriot, G. Giberne, and D. Greenhill) it was held that it involved both, and that the conviction for Perjury was consequently correct. The prisoner's petition was therefore rejected, and the sentence of the Session Court confirmed.*

THE CASE

of

EDWARD VERLING.

Charge—*Assault.*

1842
21st March.

EDWARD VERLING'S case.

The Magistrate of a Zillah or District, being also a Justice of the Peace, can alone determine or convict upon complaints against European British subjects, to the extent specified in the 53rd of George III. Chap 155, Sec. 105.

The prisoner, Edward Verling, a British born subject, was brought before the Assistant Magistrate of Surat (C. J. Erskine,) charged with assaulting certain inhabitants of the village of Oomra, in the Zillah of Surat, among whom was the prosecutor, Byramjee.—Plea, not guilty.

The assault was clearly proved, but being of a trivial nature the Assistant Magistrate sentenced the prisoner, under the provisions of Section XI. of Regulation XII. of 1827, to pay a fine of Rupees five.

The case on being brought to the notice of the Sudder Foujdaree Adawlut, the Court (present A. Bell and G.

* It was ruled in re Luxiah bin Budiah, wherein the prisoner personating a friend gave evidence before a Session Court under his friend's name, that he was properly convicted of Perjury, though the circumstances which he falsely deposed to have seen, in fact took place.—Vide Case of Luxiah bin Budiah, decided on the 31st July 1837.

1842

EDWARD VERLING'S case.

Giberne, Puisne Judges) passed the following resolution :— The Court is of opinion, that "the trial by Mr. Erskine, the Assistant Magistrate, is not legal, even supposing that he had qualified himself to be a Justice of the Peace, as the Acting Advocate General, Mr. Roper, has declared, under date the 27th of August 1836*, that only the Magistrate of the Zillah or District, qualified as a Justice of the Peace, is competent to try cases of this nature. The trial therefore being illegal, is hereby annulled, and the fine ordered to be restored."

* To

THE REGISTRAR OF THE SUDDER FOUJDAREE ADAWLUT.

SIR,

I have had the honor to receive your letter, dated the 23rd instant, respecting the construction of 105th Section of the 53rd George III. Ch. 155.

From the 26th of George III. Chapter 57, Sections 29 and 30, the 33rd of George III. Chapter 52, Sec. 153, the 47th of George III. Section 2, Chapter 68, Sec. 5, and the 53rd of George III. Chapter 155, Sec. 105, considered collectively, it appears that the Magistrate of a Zillah or District must be a Justice of the Peace, in order to entitle him to exercise the authority conferred by the Section 105 of the Act you have mentioned. It does not follow, however, that such authority can be exercised by every Justice of the Peace. Before the Statute in question had been passed, British subjects in India could only be committed or holden to bail by Justices of the Peace, but Justices could not determine nor convict upon any complaints preferred against such British subjects. In cases of assault and trespass by British subjects upon the Natives of India, or their property, the Act alluded to gives a power of conviction to a certain class of Justices of the Peace, viz. to such as were Magistrates of a Zillah or District, and in my opinion, the power given by the 53rd of George III. Chapter 155, Section 105**, is confined to the Magistrate of the Zillah (being a Justice of the Peace), and no other person being a Justice of the Peace can exercise that power within the Zillah.

(Signed) H. ROPER,

Bombay, 27th August 1836. *Acting Advocate General.*

** The Supreme Government of India, under date the 2nd of April 1838, stated, in reply to a further reference on this subject, that the power conferred by this Act of Parliament was limited in Bengal and in the North-Western Provinces to the Magistrate of a Zillah, being a Justice of the Peace, and the practice having been attended with no inconvenience, it was deemed undesirable to extend the power conferred by the Act to Assistant Magistrates.

THE CASE

of

VEERGUR SUMBOOGUR, and another.

Charge—*Concealment of Murder after the fact, and Robbery.*

1842
20th June.

The case of VEERGUR SUMBOOGUR and another.

Conviction against accessaries charged with concealment after the fact, punishable, although no conviction has been recorded against the principal

Two prisoners convicted of concealment of murder after the fact, and sentenced to transportation for life.

The prisoners, Veergur and Goolabpooree, were arraigned at the bar of the Session Court at Ahmedabad, on the 21st day of May 1842, charged with concealment of Murder after the fact, and with Robbery, in having on the 1st day of May 1842, secretly conveyed away and buried the body of one Ramashwugur Gosaen, who had been murdered on the preceding night in the Dhurumsulla of the village of Ootunsunda, in the Neriad Purgunnah of the Kaira division of the Zillah of Ahmedabad, and in having stolen property belonging to the said deceased Ramashwurgur Gosasen valued at Rupees 75-4-0.—Plea, guilty.

From the deposition of the witness Jala Beshur recorded in this case, it appeared that this witness and his nephew Umeer were entering the village of Ootunsunda with a wedding party about 4 o'clock on the morning of the 1st of May 1842, when they met three Gosaens leaving that village with a mare and a colt. On the back of the mare witness saw a man lying wrapped up in a quilt. The posture of this man attracted witness's attention, and induced him to inquire why he was lying in such a posture. The Gosaens replied, that the man was suffering from fever, and was unable to sit up. The Gosaens then proceeded on their way, and witness with the wedding party entered Ootunsunda. On talking over the matter, several of the party were of opinion, that the man whom they had seen lying on the mare was dead; witness therefore with his nephew Umeer turned back in pursuit of the Gosaens. After proceeding about half a mile, they overtook the three Gosaens, but no longer saw the man lying on the back of the mare; witness asked them to explain what had become of the man, but as they gave a very confused and unsatisfactory account of his disposal, witness charged them with murder, and with the assistance of his nephew succeed-

1842

The case of VEERGUR SUMBOOGUR, and another.

ed in apprehending two of them, viz. the prisoners, but the third made his escape. Witness then took the prisoners with the mare and colt, and delivered them into the custody of the Mookhee of Ootunsunda, to whom the prisoners made an admission, describing the spot near which the body of Ramashwurgur had been buried. Upon this information witness and the Mookhee eventually found the body buried in a water-course, in a field near Ootunsunda. This deposition was confirmed by that of the witness Umeer, and both were corroborated by the evidence of Nanabhaee, the Mookhee Patell of the village of Ootunsunda, who stated in addition that he searched the prisoners on their being delivered into his custody; that he found in the pugree of the prisoner Veergur a small bag, stained with blood, containing nineteen Rupees, two Gold Mohurs, and two Gold ear-ornaments; these articles Veergur admitted to be the deceased, Ramashwurgur Gosaen's property: some of the prisoner Golabpooree's clothes were also discovered to be stained with blood. Both prisoners further confessed, that they knew the murderer of the deceased to be Mohungur, the man who had escaped apprehension. The Dhurumsulla in which the Gosaens had slept on the previous night was examined, and the marks of blood were visible on the floor. The Inquest Report proved that there were five wounds on the body of the deceased, of so serious a nature as to cause almost instant death. The wounds the Jurors were of opinion were occasioned by stabbing the deceased with a knife.

The prisoners confirmed in Court the truth of their original confessions made before the Police Amuldar. Veergur in his confession stated, that he in company with Goolabpooree, Shewruttungur, Mohungur, and the deceased Ramashwurgur, were on their return from a pilgrimage to Dwarka; that on the night of the 30th of April 1842, they all slept close together in the Dhurumsalla of the village of Ootunsunda; that very early on the following morning Goolabpooree awoke him and pointed out the corpse of the deceased Ramashwurgur lying in a pool of blood; that he was

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The case of VEERGUR SUMBOOGUR, and another.

enquiring how the deceased came by his death, when Mohungur threatened to murder him in the same manner, if he made any disturbance; that by Mohungur's orders the deceased was wrapped up in a quilt, and placed on his mare, and they all started on the road towards Baroda about 4 A. M. on the morning of the 1st of May, intending to throw away the corpse at the first convenient place they might come to. On leaving Ootunsunda they passed a wedding party, and shortly afterwards halted, when Mohungur and Shewruttungur took the mare into a field and buried the body; that they then again proceeded on their journey, but were subsequently overtaken by two coolies, who accused them of the murder of Ramashwurgur; that these coolies apprehended him and Goolabpooree, but that Mohungur and Shewruttungur made their escape; that he was no way concerned in the murder of the deceased, and that Mohungur's threats alone prevented him disclosing his knowledge of the fact. The confession of the prisoner Goolabpooree was in substance to the same effect, but inconsistent and contradictory in detail.

The Session Judge (W. C. Andrews) was of opinion, that the prisoners Veergur and Goolabpooree were guilty of the charge preferred against them, and under circumstances of such extreme suspicion as to leave no reasonable doubt of their having themselves been the perpetrators of the murder of Ramushwurgur. In the absence however of positive evidence of that fact, the Session Judge considering that the charge of murder could not be substantiated, had directed the commitment of the prisoners on the charge of concealment of murder after the fact, of which they were accordingly convicted. The Session Judge also remarked, that the evidence for the prosecution and the confessions of the prisoners,—the latter inconsistent with each other in some points, particularly in the name of one of their party, who is by one called Shewruttungur and by the other Undurgur, the property of the deceased being found on the person of one of them, and the clothes of the other stained with blood, their statements of there being four of them in number besides the

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The case of VEERGUR SUMBOOGUR, and another.

deceased, while the witnesses for the prosecution mention only three, the active part taken by the prisoners after the commission of the murder, the opportunities of making known the murder and its perpetrators in the village or to the marriage party whom they met, and of the improbability of their failing to do so, had they not been more deeply concerned in this atrocious crime than they admit, indicated facts, which were not only conclusive against the prisoners but told also so forcibly of aggravated guilt, as in the opinion of the Session Judge to constitute one of those cases contemplated by the Law, which makes the concealment of a murder punishable to the same extent as murder itself, even to the extent of capital punishment. The Session Judge therefore having convicted the prisoners Veergur and Goolabpooree of concealment of murder after the fact and of Robbery, sentenced them to be hanged severally by the neck until dead, at the usual place of execution in the City of Ahmedabad, subject to the confirmation of the Superior Court.

Clause 5, Section I. in connection with Clause 4, Sec. XXVI. of Reg. XIV. A. D. 1827.

The Session Judge further considering the conduct of the witnesses Jala and Umeer in apprehending the prisoners highly meritorious, awarded to them a sum of Rs. 25 each as a reward,

By the Court of Sudder Foujdaree Adawlut. Mr. G. Giberne:—"I concur in the reasoning of the Session Judge, and consider that the facts and circumstances in this case clearly indicate that the prisoners are more guilty than they admit in their confessions, for they acted, in their endeavour to conceal the murder, in every respect as interested agents; but I would however sentence them to transportation for life in lieu of death."

Mr. A. Bell agreeing with Mr. Giberne, that the sentence should be reduced to transportation for life, the Court resolved to confirm the conviction of the prisoners, and to mitigate the sentence to transportation for life.

THE CASE

of

RAGOO BALCRISTNA SANE.

Charge—*Forgery.*

1841.
18th July.

RAGOO BALCRISTNA'S case.

Ruled, that a person passing separate deeds of sale of the same property to two different parties, and thus obtaining money upon both, was not guilty of Forgery, as defined in Clause 1, Section XVII. Regulation XIV. of 1827.

The prisoner Ragoo was charged with Forgery, for having on the 11th of Chytre Shood Shuke 1763, corresponding with the 2nd of April 1841, fabricated a document, purporting to be a deed of sale, conveying to one Bapoo Girjesee certain landed property, alleged by the prisoner to be his, and for having fraudulently used the said document to obtain the sum of Rupees 80, the prisoner, at the time, well knowing that he had sold this identical property two months previously to one Bhewree Baee, for the sum of Rupees 124.—Plea, not guilty.

It was proved in evidence, that the prisoner inherited certain landed property, which by a deed of sale, dated the 24th of January 1841, he had sold without reserve to one Bhewree Baee, for Rupees 124; that by a second deed of sale, bearing date the 2d of April of the same year, he again endeavoured to convey this identical property to the present complainant, Bapoo Girjosee, for Rupees 80.—Bapoo affirmed, that he had paid the sum of Rupees 80 as specified in the deed of sale, but that on endeavouring to take possession of the property, the prisoner obstructed him, on the grounds, that he had not paid the stipulated sum, and that he subsequently discovered that the property had been previously sold to Bhewree Baee.

The prisoner admitted having passed the two deeds to the different parties respectively, and also that he had received the full amount of Rupees 124 on the first from Bhewree Baee, and Rupees 14 on the second from Bapoo; but in justification of his conduct in thus twice selling the same property, he asserted, that he had reserved to himself by verbal agreement, the right of redeeming the said property from the first purchaser within two months after the execution of the deed

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RAGOO BALCRISTNA'S case.

of transfer. In support of this assertion the prisoner called in his defence one Wassoodeo, who, upon being examined, denied all knowledge of the reserved right.

The Assistant Session Judge (H. Hebbert), who tried this case on the 16th day of April 1842, remarked, that it was clearly proved that the prisoner had twice sold the same property to two different parties, by passing two separate deeds of sale, and had obtained money upon both. In regard to the prisoner's plea, that he had reserved to himself the right of redeeming the property from the first purchaser within two months, the Assistant Session Judge observed, that no such stipulation was mentioned in the first deed passed to Bhewree Baee, that the prisoner's only witness denied all knowledge of it, and that the two months if ever granted had expired prior to his entering into the second deed. Under these circumstances he considered the second deed to be false; and the prisoner's admission, that he had received Rupees 14 of the Rupees 80 agreed upon, was sufficient to convict him of making fraudulent use of it, since that was as much a fraud as if he had received the whole. The only doubt the Assistant Session Judge had, was whether the circumstances of the case amounted to Forgery, as defined by the Regulations. Upon due deliberation he was of opinion, that it did, the second deed being a false fabrication, drawn up with intent to defraud, and therefore he sentenced the prisoner, under the provisions of Clause 3, Section XVII. of Regulation XIV. of 1827, and Act XI. of 1840, to imprisonment for fifteen months, 12 with hard labor and 3 in solitary confinement. This sentence, in due course, received the confirmation of the Session Judge.

On petition the case was laid before the Sudder Foujdaree Adawlut, when Mr. G. Giberne recorded the following minute: "I am of opinion, that the prisoner cannot be considered guilty of Forgery; the second bond was neither a counterfeit nor a false fabrication, but it was a fraud of a description, which while it rendered the transaction altogether invalid, was not punishable as an offence by the Regulations. Hence

there is no other course, but to acquit the prisoner of Forgery, and order his discharge."

1842

RAGOO BALCRISTNA'S case.

Mr. Pyne and Mr. Bell, the other Puisne Judges who sat in this case, were also of opinion, that the prisoner could not be convicted of Forgery as defined by the Regulations. The Court, therefore, annulled the sentence and ordered the prisoner to be discharged.

THE CASE

of

GUNNOO BIN MAHADEO.

Charge—*Theft.*

1842
12th September.

GUNNOO BIN MAHADEO'S case.

In this case it was declared that the provisions of Act XI. of 1840 do not authorize a sentence of solitary imprisonment uncombined with imprisonment with hard labor in cases where the punishment of solitary imprisonment is not prescribed by the General Regulations for the offence committed.

This prisoner was convicted of theft, before the Magistrate of Tannah, and sentenced to fifteen days' solitary imprisonment under the provisions of Section XXXIX. of Regulation XIV. of 1827, and of Act XI. of 1840.

The Judges of the Sudder Foujdaree Adawlut noticing this case in the Magistrate's Monthly Criminal Return, directed him to certify the proceedings, doubts having arisen whether Act XI. of 1840 authorized a sentence of solitary imprisonment uncombined with imprisonment with hard labor, in cases where the punishment of solitary imprisonment was not prescribed by the Code of 1827 for the offence committed.

In review by the Sudder Court the following minutes were recorded by the Judges present.

By G. Giberne, Esquire, Puisne Judge: "It appears to me, that the wording of the Act is so clear, that there is no room to doubt its meaning. It runs: 'Wherever under the laws in force a prisoner may be sentenced to imprisonment with labor, it shall be lawful for the Court pronouncing such sentence to direct, that solitary confinement be combined with the punishment of imprisonment with labor.'

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GUNNOO BIN MAHADEO'S case.

"The laws in force allow of a sentence of imprisonment with labor in every case excepting where labor is specially excluded; so that by Act XI. of 1840, solitary imprisonment may now be combined in every such case, but it cannot be adopted by itself in those cases where the laws in force have not included it as one of the penalties.

"The Magistrate of Tannah has sentenced the prisoners to solitary confinement uncombined with imprisonment with labor, under Section XXXIX. of Regulation XIV. of 1827. This is not legal, as under that Section, only ordinary imprisonment with labor could be awarded. By the provisions of Act XI. of 1840, however, solitary imprisonment may be combined."

By John Pyne, Esquire, Puisne Judge:

"By Section VII. of Regulation XIV. imprisonment is of two kinds, solitary and ordinary.

"In regard to the former it is without hard labor. In regard to the latter it may be with hard labor.

"Imprisonment, then, with labor must be ordinary imprisonment; solitary imprisonment cannot have labor added in the sentence, or in other words cannot be in combination with ordinary imprisonment.

"To obviate this, and allow the solitary imprisonment (one of the definitions of imprisonment,) to be combined with ordinary or labor imprisonment, (the other definition, if so specified in the sentence,) Act XI. of 1840 was passed.

"As there are only two descriptions of imprisonment, and as in one of them, viz. solitary, labor could not be added, and as the law provided that labor might be given with imprisonment, it is indisputably ordinary imprisonment.

"When, therefore, the Act says, that whenever a prisoner under the laws in force may be sentenced to imprisonment with labor, &c. it must refer to ordinary imprisonment, because there is no other imprisonment under which labor can be given; and when it further adds, that solitary confinement may be combined with the punishment of imprisonment with

labor, this can only mean ordinary imprisonment, as contradistinguished from solitary.

"Whenever, therefore, in the Regulations ordinary imprisonment is specified under the Laws in force, solitary could not be awarded; but as by the enactment solitary imprisonment may be combined with imprisonment with labor, and as there is no imprisonment with labor, save ordinary, it is a consequence that ordinary and solitary may be combined. In the provisions where imprisonment stands alone, sentence of solitary imprisonment may be still awarded; or ordinary imprisonment, and then by virtue of the Act, when labor is included in the latter, solitary may be added. Ordinary imprisonment, without labor specified in the sentences, cannot be combined with solitary."

By B. Hutt, Esquire, Puisne Judge:—

"I beg to record my dissent from the view now taken by my colleagues, considering that Section II. of Act XI. of 1840, declares the alteration to be in modification of Section VII. of Regulation XIV. of 1827, wherein it is declared, that solitary imprisonment shall not be combined with ordinary imprisonment; that this merely reverses that, and does not sanction the imposition of solitary imprisonment for any offence for which Regulation XIV. of 1827, does not already allow that description of punishment. Had it been intended to do so, this act would have specifically declared, that besides the offences now punishable with solitary imprisonment, all offences punishable with imprisonment and hard labor may be punished with solitary imprisonment combined with that punishment, and my dissent refers not only to its combination with hard labor, but also alone."

The Court, therefore, in accordance with the minutes, informed the Magistrate of Tannah, that the sentence passed by him in this case was illegal, and declared that the provisions of Act XI. of 1840 do not authorize a sentence of solitary imprisonment uncombined with imprisonment with hard labor, in cases where the punishment of solitary imprisonment is not prescribed by the General Regulations for the offence committed.

Vide Interpretation on Act XI. of 1840.

THE CASE

of

BABJIA and DOWLUTTIA.

Charge—*Gang Robbery with attempt to Murder.*

SUTTIA, YESSIA, NAIKIA, ROWJIA SUNTIA and BAPPOO.

Charge—*Gang Robbery with wounding.*

BHUGGIA.

Charge—*Instigating Gang Robbery.*

1842
17th October.

The case of BABJIA and others.

The corroboration required by the Regulations to render the testimony of an accomplice worthy of credit exemplified.

Ruled, that if the evidence of an accomplice be satisfactorily corroborated in regard to some of the prisoners, his testimony may be acted upon with respect to other prisoners, although as far as it affects them, it may have received no confirmation.

The prevalence of Gang Robberies within any particular district, held to be a circumstance of aggravation, and a matter deserving of weight in passing sentence.

These prisoners on being arraigned before the Session Judge of Poonah, on the 19th day of September 1842, pleaded, not guilty.

From the evidence of the pardoned accomplice, Chand Patell, who was admitted as a witness for the prosecution, it appeared that the prisoners were all of the Ramoosee caste, and inhabitants of the village of Owndè, in the Poonah Zillah; that on the evening of the 21st of June 1842, by the direction of the prisoner Bhuggia, the gang, consisting of the other eight prisoners, together with Kondia, Pandia, and himself, in all eleven, were assembled and sent out along the Bombay road for the express purpose of plunder; that the gang were all armed, some with swords, others with clubs; that they proceeded to Gunesh Khind, where they placed themselves in ambush behind a prickly pear hedge near the high-road; that shortly afterwards a shigram carriage with a Sahib sitting upon the box-seat came up; that the prisoners Babjia, Dowluttia, and Rowjia, rushed out and stopped the carriage, while Kondia attacked the Sahib with his sword and wounded him; that a scuffle ensued, when the prisoners Babjia, Dowluttia, and Suntia, ran up and repeatedly wounded the Sahib until he fell—that while the Sahib was lying on the ground, Kondia robbed him of his watch and guard-chain—that the gang next wounded the driver, and plundered the carriage of its contents,

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The case of BANJIA and others.

consisting of a quantity of clothes, twenty-four Rupees in cash, a bunch of keys, and other articles—that the gang at last becoming alarmed by the screams of the Sahib's wife ran off, leaving the Sahib, as witness believed, for dead. On the third day after the robbery, witness went to the house of Bhuggia to receive his share of the plunder, and there found Kondia, and the prisoners Dowluttia and Naikia, engaged in taking a chain off a watch. Kondia gave witness a ring, which he pawned to one Moteram. Some pieces of a watch, guard-chain, and a ring, shown to him in Court, witness identified as part of the stolen property.

This statement was corroborated by the testimony of Richard Welsh, a Sub-Conductor in the Commissariat Department, who deposed that he was travelling with his wife and children in a shigram from Bombay to Poona, and on the evening of the 21st of June 1842, shortly after he had passed the village of Owndè, his carriage was stopped by a gang of armed robbers; that he jumped off the box-seat, and defended himself with his umbrella, until being overpowered he fell covered with wounds; that when he was lying on the ground, one of the robbers came up to him, pulled his watch from his fob, and with a sword cut a strong silver guard-chain to which it was attached; that from loss of blood he then became senseless, but after the departure of the gang he revived, and with the assistance of his wife and the driver of the shigram was removed to the Civil Hospital at Poonah: that in this attack he received thirteen wounds, and had in consequence sustained serious injuries, besides having lost property of the value of Rupees 179-12. Deponent identified as his property some pieces of a watch, and guard-chain, and also a bunch of keys and a ring.

Lucy Welsh, the wife of the last witness, and Gopalla, the driver of the shigram, confirmed the details of the attack as narrated by Richard Welsh, stating in addition other particulars regarding the plunder of the carriage, and the wounding of Gopalla, all strongly corroborative of the evidence of the accomplice.

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Gugjee, a resident of Owndè, deposed, that after the robbery, Suttia in conversation confessed he was one of the gang; that she saw in the house of the prisoner Naikia some pieces of a watch, and by accident found in the roof of Bhuggia's cow-shed a bunch of keys and a pin-cushion—the keys she sold to a Gosaen, and the pin-cushion she opened in the hopes of finding something valuable in it.

Moteram affirmed, that he received a ring in pawn from Chand Patell; Raeebhanjee, that he purchased from the prisoner Bhuggia four pieces of a silver chain; and the Gosaen, that he bought of the witness Gugjee a bunch of keys: all these articles were fully identified. It was also proved by the depositions of the Deshmook and Police Patell of Owndè, that, with the exception of Dowluttia and Bhuggia, the other prisoners after the robbery absconded from their village.

The prisoner Bappoo alone made a confession before the Police authorities, and this he retracted before the Session Court. Dowluttia and Bhuggia simply denied the charges preferred against them, while Bhuggia, Suttia, Yessia, Naikia, Rowjea, and Suntia, in their defence endeavoured to prove an *alibi*, and signally failed.

The Session Judge (J. Warden) considered the case clearly established against the prisoner Bappoo, who in corroboration of the evidence of the pardoned accomplice Chund Patell made a confession before the Magistrate, which, although retracted before the Court, had been duly authenticated and proved. The conviction of the remaining prisoners, the Session Judge remarked, rested on the corroboration which the evidence of the accomplice had received from other independent testimony, and the extent to which his evidence strengthened the general impressions produced by the circumstances of the case. On these principles, he considered the evidence of Chund Patell operated against all the prisoners. All the prisoners, with the exception of the prisoners Dowluttia and Bhuggia, met the charges brought against them by an appeal to certain parties, named, to prove an *alibi*, who upon being examined entirely failed to support this assump-

Clause 2, Section XXXV. of Regulation XII. of 1827.

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tion, and the prisoner Yessia, under the advice of his Counsel, by refusing to examine his witnesses, rendered his failure the most complete. Thus these prisoners, the Session Judge held, upon the acknowledged rule, that an ineffectual attempt to prove an *alibi* supports the prosecution, had themselves corroborated the evidence of the accomplice. The Session Judge next proceeded to shew in detail how the evidence of the accomplice was corroborated, and tested by the depositions of the different witnesses for the prosecution; and lastly, the Session Judge remarked, that the evidence of the accomplice strengthened the general impressions produced by the circumstances of the case—for instance, by the flight of the prisoners (with the exception of Dowluttia and Bhuggia,) from their village after the robbery—the coincidence observable between the narrative of the prosecutor and his wife, and the details of the attack given by the accomplice—the consistency of the evidence of the accomplice before the Police and before the Session Court &c. The Session Judge had, therefore, no hesitation in convicting all the prisoners of the offences laid to their charge. In regard to the punishment to be awarded, the Session Judge remarked, that the commission of so daring an outrage upon the highroad within two miles of the City of Poonah—the prevalence of Gang Robberies within the district, seventeen having been reported by the Magistrate to have been perpetrated within six months—the serious nature of the injuries inflicted upon the prosecutor, whom the robbers had left for dead—and the fact of many of the prisoners being old offenders, were circumstances of such aggravation as to induce him (the Session Judge) to award a very severe punishment. He therefore sentenced the prisoners Babjia and Dowluttia, to suffer death, and the prisoners Suttia, Yessia, Naikia, Rowjia, Suntia, Bappoo, and Bhuggia, to transportation for life, subject to the final orders of the Superior Court.

By the Court of Sudder Foujdaree Adawlut. Mr. G. Giberne:—"I concur in the conviction, and consider that the evidence of the accomplice is not only worthy of credit, but

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strongly corroborated by other evidence and circumstances. With regard to punishment, the Session Judge has considered it necessary to make a severe example, and truly the occasion would seem to call for it, as the attempt to murder an inoffensive traveller, and the successful robbery of that traveller and of his wife and children committed on the highroad close to Poonah, leaving the former, as the robbers thought, a corpse, evinces a cruelty, as well as a boldness, which could only have been arrived at after many successful acts of the same illegal description, and many of which still undetected have, as it is reported by the Magistrate, taken place in the neighbourhood of Poonah of late. I would therefore, under this view, and the peculiar circumstances of the case, confirm the sentence."

Mr. J. Pyne: "The Session Judge has justly observed, that the credence due to the testimony of the accomplice may be greatly strengthened by auxiliary considerations tending to the same point, and that if concurrent and independent circumstances confirm the truth of his assertion, it is to be received as accredited evidence. This confirmation, it appears to me, has been obtained with reference to several of the prisoners, and therefore entitles that portion of the evidence, which is not corroborated against other prisoners, to be received; for remarks, vide Russell, Page 599, Volume II. on the subject of the degree of credit which is given in the English Courts to the testimony of an accomplice. 'This confirmation need not extend to every part of the accomplice's evidence, for there would be no occasion to use him at all as a witness, if his narrative could be completely proved by other evidence free from suspicion. But the question is, whether he is to be believed upon points which the confirmation does not reach. Accordingly where an accomplice was examined on the part of the prosecution, who was confirmed in the testimony he gave as to some of the prisoners, but not as to the rest, Mr. Justice Bayley told the Jury, if they were satisfied by the confirmatory evidence which had been given, that the accomplice was a credible witness, they might act upon that testimony with respect to others of the prisoners, although as far as

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his evidence affected them; it had received no confirmation, and all the parties were convicted. To the same effect is a case mentioned by Lord Ellenborough, and unanimously concurred in by the twelve Judges.'

"It is shewn as corroborative of the accomplice's testimony, that the fruits of the crime were in the possession of certain of the prisoners mentioned by him: it is further shewn, that certain of these prisoners admitted, in the presence of a third person, that they had been present at the robbery; it has not been attempted by the prisoners satisfactorily to account for the possession of the said property; but it is attempted to be shewn by all the prisioners, with the exception of Dowluttia and Bhuggia, that they were elsewhere on the night of the robbery; in this they have signally failed, and the defence thus set up, therefore, in its failure becomes formidable inculpatory evidence against them.

"A conviction of attempt to commit murder and of gang robbery is recorded against the prisoners Babjia and Dowluttia, and a sentence of death has been passed upon them. The sentence passed against these two prisoners may be awarded for either of the crimes with which they stand charged. In the opinion of the Session Judge, the numerous and unrestrained instances of gang robbery which have recently taken place in the district where the present outrage occurred, call for a severe example. We find from the record, that in aggravation of the crime of gang robbery, the two prisoners assaulted in a merciless way an unarmed man, and the infliction of repeated wounds with their swords, amounting in the whole to no less than thirteen, left him, as the accomplice declares, to all appearances dead upon the spot, when they were affrighted and fled in consequence of the screams of his wife, who believed that his death was accomplished, and which so far as their instrumentality was concerned, they considered effected. Viewing then the atrocity of the case, and not perceiving any palliating circumstance of sufficient importance to arrest the sentence passed, I cannot hold myself justified in interfering with the verdict of the lower Court, which will go forth as a

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solemn warning to the numerous gangs now disturbing the peace of the country, and not improbably curb them in their desperate career, and happily preserve the lives of others who might fall victims of their outrages. The conviction and sentence passed on the remaining prisoners requires no observation further than this,—I cannot perceive on what grounds the prisoner Suntia was not indicted on a charge of attempt to commit murder, as well as the prisoners Babjia and Dowluttia, or why a similar conviction was not recorded against him, supported by the same evidence which convicted the other two prisoners of an attempt to commit murder."

The Court finally resolved to confirm the conviction and sentence upon all the prisoners.

THE CASE

of

PANDOORUNG VISHWANATH.

Charge—*Defrauding the Post Office.*

1842
28th November.

PANDOORUNG VISHWANATH'S case.

The prisoner was fined Rupees 50 for defrauding the Post Office, by enclosing a private letter in a package attested to contain nothing but Law Papers. Ruled by the Sudder Foujdaree Adwalut, that as the penalty for this offence specified in Act XVII. of 1837 was positive, no smaller fine than Rupees 50 could be awarded under its provisions.

The prisoner, a Karkoon, in the service of a Vakeel attached to the Rutnagiree Adawlut, posted for Hurnee, on the 28th of June 1842, a certain package, specified and attested to contain nothing but Law Papers, and on that account paid, in accordance with Table II. of Schedule A. of Act XVII. of 1837, a lower rate of postage. It was subsequently discovered that this package contained a private letter addressed to certain parties in Hurnee.

On conviction before a Magistrate of having knowingly committed this offence, the prisoner was fined in the sum of Rupees 50, under the provisions of Section IX. of the above quoted Act.

Against this award the prisoner petitioned the Court of Sudder Foujdaree Adawlut, praying, that the fine levied might be remitted.

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PANDOORUNG VISHWANATH'S case.

The Court (present A. Bell, G. Giberne, and B. Hutt) ruled, that as the conviction was sound, and as the Law was positive touching the amount of fine, it could not be disturbed. Mr. Giberne dissented from this resolution, inasmuch that he held, that as the letter inserted in the package contained matter relative to the Law Papers, the prisoner was by the spirit, though not by the letter of the Act, entitled to an acquittal.

THE CASE

of

1843
20th February.

The case of MAUNSING and others.

1. MAUNSING.	17. HAJEE.
2. WURSHALLBHAEE.	18. BHUGWANSING.
3. DADABHAEE.	19. DOODABHAEE.
4. HUNNOOBHAEE.	20. FUTTEHSING.
5. DEWAJEE.	21. SUJJANGHUR.
6. JALLUMSHUNG.	22. RUHEEA.
7. HURREEBHUTT.	23. WUKTABHAEE.
8. HAJEEBHAEE.	24. PERTABHAEE.
9. KHODA.	25. KESSABHAEE.
10. KUNTHABHAEE.	26. DOODABHAEE KHODABHAEE.
11. DOSSABHAEE.	27. KOOMANSING.
12. HIMMUTSING.	28. DEOSEE.
13. PHULZEE.	29. NARUN.
14. MANABHAEE.	30. UMRABHAEE.
15. LAKHAJEE.	
16. ROWLA.	

Charge—*Murder committed in an affray.*

In this affray, which was consequent on a boundary dispute between the villagers of Kookud and Adurka, seven persons were killed and six wounded. Thirty prisoners were brought to trial, and fifteen convicted by the Session Judge and sentenced to transportation for life

Held by the Sudder Foujdaree Adawlut, that as the villagers of Adurka had in the first instance endeavoured to settle the dispute by treaty, and had throughout the affray acted on the defensive, they were entitled to an acquittal. But that, on the other hand, the villagers of Kookud, who from the first were the aggressors, and with whom the affray originated, were deserving of punishment. The Court, therefore, selected three prisoners, inhabitants of Kookud, and confirmed the sentence of transpor-

These prisoners were arraigned at the bar of the Session Court of Ahmedabad, on the 9th day of January 1843, charged with murder, for having on the 22nd day of September 1842, in company with about forty other persons, met together armed with swords, matchlocks, &c. between the boundaries

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of the villages of Kookud and Adurka, purgunn a Gogo, within the Zillah of Ahmedabad, and for having killed seven persons and wounded six others in an affray which then and there took place, in consequence of a boundary dispute.—Plea, not guilty.

tation upon them, and recommended the other prisoners to Government for a mitigated punishment of four years' imprisonment. The-e periods of imprisonment were finally further mitigated by Government.

It appeared that the land in dispute had been a frequent cause of quarrel and animosity between the inhabitants of Kookud and Adurka; that on or about the 12th of September 1842, the prisoners Maunsing and Wuktabhaee, as the representatives of their respective villages, came to the Mamlutdar of Gogo each praying to be allowed to cultivate the land in dispute; that the Mamlutdar informed them, that he was going to Ahmedabad on duty, but that on his return he would personally inspect the boundary, and settle their dispute, ordering that neither party should in the meantime cultivate the land. In contravention of this order, on the morning of the 22nd of September following, the prisoners Hunnoobhaee and Dossabhaee sent some of their men with four ploughs to break up the land in dispute, and in order to prevent opposition from the villagers of Adurka, about twenty persons accompanied these ploughmen, who commenced ploughing the land. This party was subsequently joined by many of their fellow villagers from Kookud, until their number amounted, as some of the witnesses deposed, to fifty, others to eighty or a hundred. The villagers of Adurka, on the other hand, to prevent the ploughing, assembled, and arming themselves proceeded to the disputed boundary, taking with them as a mediator, one Ugoobhaee, a resident of a neighbouring village, and unconnected with the dispute. Ugoobhaee, in order to prevail upon the villagers of Kookud to desist ploughing, advanced and held some conversation with the prisoners Dossabhaee and Dadabhaee, which terminated in their consenting to unyoke the bullocks from the ploughs, on condition that the people of Adurka would retire. In compliance with this agreement, the people of Adurka began to return to their village, but in doing so, they had to pass near to the Kookud party, who commenced pelting them with stones. This be-

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ing returned by them, the Kookud party fired, when the assault became general, and a fight ensued, in which six persons were killed, and some wounded, and of these latter one subsequently died. Of the persons killed, six were inhabitants of Adurka, and of the wounded two belonged to the same village. Of the thirty prisoners arraigned, fifteen admitted having been present at the fight, but denied that they were armed or that they committed the several acts of violence and murder laid to their charge; the other prisoners denied even being present.

The Session Judge (W. C. Andrews) remarked, that it was almost impossible to ascertain in an action of this kind the parties by whose hands death had been caused, although some of the witnesses for the prosecution had attempted to particularize individuals. All, therefore, who were present must be held equally culpable, on whichever side they had ranged themselves. The *causâ belli* the Session Judge considered was satisfactorily proved to have originated with the Kookud villagers, who foresaw and were prepared for the result which followed. This was evident from their having assembled in numbers, armed with various weapons for the purpose of protecting those persons who were ploughing the disputed land. The conduct of the opposite party in going out in an armed body to force the withdrawal of their opponents, he considered to be equally unjustifiable. The Session Judge then acquitted fifteen of the prisoners in the absence of sufficient proof, but of these he ordered eight to furnish security for future good behaviour. The other prisoners, viz. No. 1 Maunsing, No. 2 Wurshalibhaee, No. 3 Dadabhaee, No. 4 Hunnoobhaee, No. 5 Dewajee, No. 6 Jallumshung, No. 7 Hurreebhaee, No 8 Hajeebhaee, No. 10 Kunthabhaee, No. 11 Dossabhaee, inhabitants of Kookud, and No. 23 Wuktabhaee, No. 24 Patabhaee, No. 25 Kessabhaee, No. 26 Doodabhaee, and No. 27 Koomansing, inhabitants of Adurka, the Session Judge convicted of aiding and abetting in the commission of the several instances of murder and wounding set forth in the charge, and sentenced them to

Clause 5, Section I. Clause 4, Section XXVI. Clause 1, Section XXIX. of Regulation XIV. of 1827.

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transportation for life, subject to the confirmation of the Superior Court.

By the Sudder Foujdaree Adawlut. Mr. A. Bell, Puisne Judge:—"This offence may be viewed more in the light of culpable homicide than deliberate murder, although the trying authority is fully borne out in the finding, which he has recorded, under the definition of the offence in the Bombay Code of 1827. It is one of those unfortunate affrays which were formerly of such frequent occurrence in Guzerat. The Kookud villagers were evidently the aggressors, and their having armed themselves with matchlocks, is a most unfavourable feature in the case, and this impression is strengthened by their having placed a guard over the disputed spot to prevent the Adurka people from offering opposition to the ploughing of the ground. I would therefore confirm the conviction and sentence against the Kookud prisoners, but as some of them are less culpable than the others, these might be recommended as fit objects for the mercy of Government for a mitigated punishment of five years' imprisonment with labor, one of which should be solitary. As the Adurka people did not seek the quarrel, but on the contrary did all in their power to adjust matters, I would acquit them. It would appear from the evidence of the witness Rajoo, that the disputed boundary was reported to the Mamlutdar. Had this officer at once proceeded to the spot, and there decided the question, instead of going into Ahmedabad on business, which most probably was not of a very pressing nature, knowing as he must have done, the excited feelings of the disputants on all boundary questions, this fearful loss of life, in all probability, might have been prevented. On this point, therefore, I propose, that the Magistrate should be required to institute special enquiry as to whether blame is in any way attributable to the Mamlutdar or his subordinates, and that the result be reported to the Court."

Mr. J. Pyne, Puisne Judge, in his recorded minute went very fully into the details of this trial, and remarked, among other things, that there was a degree of independent evidence

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brought forward in this case, which was not usually to be collected in crimes of this nature, viz. the evidence of several persons who were wholly uninterested in the matter in dispute, and that the testimony of these witnesses fixed a deliberate breach of the peace upon one party, and greatly, if not entirely, exonerated the other party from any hostile intention, until in self-defence they were obliged to repel the assault made upon them. It thus seemed clear to the Puisne Judge, that the intention of the Adurka villagers was up to a certain point pacific, and that under the exigencies of the case, they adopted the best means of obtaining their object by treaty. The Puisne Judge also remarked, that there was no evidence on the record to shew that they manifested by gesture or overt acts any desire to depart from this peaceable line of conduct, but, on the contrary, that there was direct evidence to prove that the Kookud villagers had wantonly trespassed, that they had assembled armed in order to put down opposition, and that fire-arms were first discharged from their ranks. The question was, were the Adurka people justified in resenting, as far as lay in their power, this apparently unprovoked attack? The result of the contest, the Puisne Judge observed, was a strong circumstance in favor of the Adurka people, that the assault was not premeditated by them, for it was shewn, that of seven persons killed, six were of their party. The Puisne Judge was consequently of opinion, that the conduct of the villagers of Adurka was marked by great moderation, considering the unnatural state of excitement a boundary dispute in almost every case creates, and he therefore considered, that the prisoners who were inhabitants of Adurka should be acquitted. He was further of opinion, that it would be a sufficient example to select the prisoner Maunsing No. 1, who after a personal interview with the Mamlutdar wilfully disobeyed orders, Dadabhaee No. 3, and Hunnoobhaee No. 4, who sent their ploughs to break up the disputed land, and to confirm the sentence of imprisonment for life upon them —not that in the actual fight, nor in the previous counsels, these persons were more guilty than the others, but because

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they were the only persons against whom overt acts were proved,—so as to distinguish their behaviour from their associates. With respect to the other prisoners, also inhabitants of Kookud, the Puisne Judge recommended that their case should be submitted to Government, and that the punishment of imprisonment for life be mitigated to one year of solitary confinement.

The Court finally resolved to acquit the prisoners Wuktubhaee No. 23, Pertabhaee No. 24, Kessabhaee No. 25, Doodabhaee Khodabhaee No. 26, and Koomansing No. 27, inhabitants of Adurka, and to confirm the conviction and sentence on all the other prisoners, who were inhabitants of Kookud, but being of opinion, that the prisoners Wurshallbhaee No. 2, Dewajee No. 5, Jallumshung No. 6, Hurreebhut No. 7, Hajeebhaee No. 8, Kunthabhaee No. 10, and Dossabhaee No. 11, were fit objects for the clemency of Government, the Court recommended that their sentences should be mitigated to four years' imprisonment, three with labor and one in solitary confinement.

In reply to the Court's recommendation, the Secretary to Government in the Judicial Department notified to the Judges, that the Honorable the Governor in Council had been pleased further to mitigate the sentences passed on the prisoners Wurshallbhaee No. 2, Dewajee No. 5, Jullumshung No. 6, Hurreebhut No. 7, Hajeebhaee No. 8, Kunthabhaee No. 10, and Dossabhaee No. 11, to imprisonment for two years with hard labor, and also to mitigate the sentence of transportation for life passed upon the prisoners Maunsing No. 1, Dadabhaee No. 3, and Hunnoobhaee No. 4, to five years' imprisonment with hard labor.

THE CASE

of

OOMA KOME MAHADOO.

Charge—*Aiding and abetting in Murder.*

1843
20th February.

OOMA KOME MAHADOO'S case.

In this case of murder, the principal escaped, but the accessary was brought to trial and convicted, and sentenced by the Session Judge to nine years' imprisonment with labor and to two months of solitary confinement.

The Court of Sudder Foujdaree Adawlut confirmed the sentence of the Session Judge, but remarked, that the better course would have been to have postponed the trial, and to have offered a reward for the apprehension of the principal.

The prisoner on being arraigned before the Session Judge of Sholapoor, pleaded, not guilty.

It was proved by the prisoner's original confession, that her husband Mahadoo owed one Wittooba a grudge, and that in order to be revenged, Mahadoo induced the prisoner to bring about a meeting between them; that accordingly, on the 13th December 1842, the prisoner took Wittooba into the Barsee jungle under the pretext of cutting grass, and there, as previously arranged, met Mahadoo, with whom she left Wittooba in conversation, and that on Mahadoo's return home the same evening he admitted to the prisoner he had murdered Wittooba. In support of this confession it was also proved, that the corpse of Wittooba was found decapitated near to a spot pointed out by the prisoner; that her husband had absconded from his village, and had not, up to the date of this trial, been apprehended; and also that enmity existed between the deceased and Mahadoo.

The prisoner made no defence, but simply denied the charge.

The Session Judge (W. Birdwood) convicted the prisoner of the charge preferred, and sentenced her to be imprisoned for the period of nine years and two months, nine years with labor, and two months in solitary confinement.

On this case being laid for confirmation before the Judges of Sudder Foujdaree Adawlut, the Court resolved to confirm the sentence, but remarked that it would have been far more satisfactory had this trial been postponed, and a reward offered for the apprehension of the prisoner's husband, who appeared to be the principal in this case of murder.

THE CASE

of

EERA BIN CHENNAPPA.

Charge—*Murder*.

1843
28th February.

EERA BIN CHENNAPPA'S case.

Held by the Sudder Foujdaree Adawlut, that it was very desirable to complete a case of murder without any adjournment during the trial, unless to obtain time for consideration before passing sentence.

The trial of this prisoner at Dharwar was commenced on the 8th day of December 1842, when the prisoner was arraigned on a charge of having murdered his brother-in-law, Sungappa, and of having robbed his person of a silver armlet, of the value of Rupees 8.—Plea, not guilty.

The case being clearly proved by the prisoner's confession and other independent evidence, the Session Judge (J. W. Muspratt) sentenced the prisoner to be hanged by the neck until dead, subject to the confirmation of the superior tribunal.

The Court of Sudder Foujdaree Adawlut (present A. Bell and J. Pyne) confirmed this sentence, but observing that the Session Judge had in the conduct of this trial twice adjourned the case, once almost immediately after the prisoner had been arraigned, and a second time during the trial, expressed with regret their disapproval of a course so highly objectionable, and directed the Session Judge to be informed that cases of murder should, if possible, be completed without any adjournment, unless to obtain time for consideration before passing sentence.

THE CASE

of

PANDOORUNG VITTUL AND GUNESH JUGGANATH.

Charge—*Forgery*.

1843
24th April.

The case of PANDOORUNG VITTUL and another.

On a question, whether a charge of Forgery could be sustained on a deed which had ceased to be of any value, by being superseded by another deed of later date, specifically cancelling all to which the former one referred, it was held by Sudder Foujdaree Adawlut, that as the former deed had been falsely altered, and applied to a fraudulent purpose, the Forgery was complete.

These prisoners were tried for Forgery before the Assistant Session Judge of Poona. on the 16th day of July 1842, for having falsely interpolated and altered a certain Mortgage Bond, and for having knowingly applied the same to a fraudulent purpose.—Plea, not guilty.

The circumstances which gave rise to this case were as follows:—One Emambhaee Attar, father to the prosecutor Shureefbhaee, borrowed of the prisoner, Gunesh, the sum of Rupees 100, and passed to him a bond, (written by the prisoner Pandoorung,) dated 10th Phalgoon shood 1753, or 12th of March 1832, mortgaging a shop situated in the Eitwar Peit of the city of Poonah. That afterwards, in the year 1839, the prisoner Gunesh sued the prosecutor, in the Court of the Moonsiff at Poonah, on this bond, for the sum of Rupees 199-11, principal and interest, when the prosecutor for the first time became aware, that an additional clause had been entered in the bond, whereby his father's house situated in the Kusba Peit was included as security for the money raised on the shop alone. That before any judicial decision was passed in this matter, the parties came to an amicable settlement, and filed a Razeenamah withdrawing the suit. In accordance with this settlement, Shureefbhaee, the prosecutor, executed a deed of adjustment in favor of the prisoner Gunesh, for Rupees 55, payable in eight months. This deed specifically stated, that all former transactions were cancelled, including the original mortgage bond, which thus became utterly valueless. On default by Shureefbhaee, the prisoner Gunesh, in 1841, filed another suit against him, to recover the sum due on the deed of adjustment with interest, and obtained a judgment in the Court of the Moonsiff of Poonah. Against this judgment Shureefbhaee appealed to the Assistant

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The case of PANDOORUNG VITTUL and another.

Judge, who, from the fact of the prisoner Gunesh having first instituted a suit for Rupees 199-11, and afterwards compromised the matter for so small a sum as Rupees 55, suspected fraud, and therefore, for his own satisfaction, called for the papers in the original suit, and on examining the mortgage bond, indications of erasures and interpolations were so manifest, that the Assistant Judge sent the prisoners before the Magistrate for investigation.

On the trial, proof was brought forward which clearly established, that the shop alone was mortgaged to the prisoner, and that the clause including the house was an interpolation, falsely added by the prisoner Pandoorung. The interpolation, which consisted of three lines, was very evident; it had been added at the foot of the paper, on a part usually left blank, in a different coloured ink, and with a different sized pen, and its insertion was very abrupt, for after minutely describing the shop, its situation, and boundaries, the mortgage of the house was introduced without any descriptive particulars, and then the sense as abruptly reverted to the shop; and although one or two alterations and erasures had been made to adapt the context, yet the sense was in a great measure destroyed by the want of connexion between the different parts of the bond. It was also proved, that the mortgaged shop, having been required for certain municipal improvements in the city of Poonah, had been knocked down at a valuation of Rupees 39, a sum insufficient to cover the prisoner Gunesh's claim. This at once supplied a motive for the prisoners' conduct, and showed the fraudulent intent with which they had altered and used the mortgage bond.

The prisoner Pandoorung stated, that he wrote the mortgage bond on the date specified therein; that the house as well as the shop were originally mortgaged to the prisoner Gunesh; that he had never made any interpolation or erasures in the bond, and accounted for the clause regarding the mortgage of the house being written in a different coloured ink, by saying, that he wrote the first page of the bond with a wanee's pen and ink, that the wanee wanting his pen and ink, prisoner took

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another pen and wrote the clause in reference to the house, when the the wanee returned and gave him his pen and ink, with which he finished writing the bond.

The prisoner Gunesh in his defence asserted the genuineness of the mortgage bond, and produced the Razeenamah, the deed of adjustment, and other exhibits belonging to the civil suit, and on these documents he placed great stress, for his counsel argued, that by them it was proved that the prosecutor himself had virtually admitted the mortgage bond to be genuine, and that if it really had been false, the prosecutor would never have compromised the suit founded upon it. But on the other hand it was shewn, that the prosecutor was an ignorant person, and that it was doubtful whether the compromise had not been concluded, contrary to the prosecutor's wish, by a designing Vukeel, to whom he had entrusted his case.

The Assistant Session Judge (W. Hart) convicted the prisoners, and sentenced Pandoorung to suffer one year's imprisonment with labor, and to pay a fine of Rupees 800, commutable in default to four years further imprisonment, and Gunesh to suffer two years' imprisonment with labor, and to pay a fine of Rupees 600, commutable to three years additional imprisonment.

Clause 3, Section XVII. of Regulation XIV. of 1827.

The Session Judge (J. Warden) reduced the fine imposed upon the prisoner Pandoorung to Rupees 400, and the period of imprisonment in commutation to two years, and also remitted the hard labor combined with this prisoner's sentence, in consequence of his great age, 66 years; but confirmed the remainder of the sentence passed by his Assistant.

Extreme age, held to be a ground for mitigation in awarding punishment.

On petition by the prisoners, the case was submitted to the Court of Sudder Foujdaree Adawlut, when it became a question, whether a charge of Forgery could be sustained on a deed which had ceased to be of any value, and which had been superseded by a later instrument specifically cancelling all to which the former one referred. The Judges (present W. Simson and B. Hutt) held, that with reference to all the circumstances of this case, the forgery was complete, when the

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The case of PÆNDOORUNG VITTUL and another.

altered deed, viz. the mortgage bond, was applied to a fraudulent purpose by being propounded in the Moonsiff's Court at Poonah. The Court therefore seeing no cause for interference, rejected the prisoners' petition.*

THE CASE

of

APPA, YADOO, AND SHECKOO.

Charge—*Murder.*

1843
10th July.

The case of APPA WULUD BALLAJEE and others.

Three prisoners convicted of Murder, and sentenced to transportation for life, upon the dying declaration of the deceased given on solemn affirmation before constituted authority.

Whenever any weapon or other article is produced at a trial, its connexion with the case, and the place where it was found, should be clearly set forth on the record.

This trial was held at Sholapoor, on the 22nd of May 1843, when the prisoner Appa was charged with the wilful murder of one Kondee, and the prisoners Yadoo and Sheckoo as accessaries with aiding and abetting.—Plea, not guilty.

The conviction in this case rested entirely on the credit due to the dying declaration† of the deceased Kondee. In this declaration, which was taken on solemn affirmation before the Police Amildar of Wairak, on the 17th of March 1843, the

* The prisoner Gunesh in appeal carried his suit, founded on the deed of adjustment, into the Court of Sudder Dewanee Adawlut, when the Court threw out his claim, on the grounds, that as the deed of adjustment arose out of a previous fraudulent transaction, and was the effect of false impressions with respect to the frauds practised by the prisoner Gunesh, the plaintiff, it could not be held to be binding on Shureefbhaee, the defendant.

† *Dying declarations.*—"The general principle on which this species of evidence is admitted, is, that they are declarations made in extremity, when the party is at the point of death, and when every hope in this world is gone: when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth: a situation so solemn, and so awful, is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of Justice." Vide Russell on Crime, Book VI. Sec. III. page 683 of Vol. II. Again he states at page 687, that "it is a general rule, that dying declarations, although made with a full consciousness of approaching death, are only admissible in evidence, where the death of the deceased is the subject of the charge, and the circumstances of the death the subject of the dying declaration."

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deceased affirmed, that on the morning after the Hoolee, viz. on the 16th of March, he was awoke by the prisoners Yadoo and Sheckoo seizing him by the hands, and while these prisoners held him down, the prisoner Appa deliberately wounded him twice with a hatchet on the forehead; that he was enabled to recognize the prisoners by the light of the moon. The declarant next described the nature and extent of the wounds he had received, and was about to enter into other particulars, when he became speechless, and shortly afterwards expired. In corroboration, it was proved by the evidence of Ruckmee, the deceased's wife, that she at day-light on the morning of the 16th of March found the deceased, her husband, lying wounded near the village gate of Jowlgaum, and that he then accused the prisoners Yadoo and Sheckoo with holding and Appa with wounding him. Three other witnesses deposed to the same effect. The prisoner Sheckoo before the Police Amildar admitted that Appa was at enmity with the Mhars of Jowlgaum, and that he had three days before the Hoolee expressed his intention of killing the first Mhar he could find alone. Sheckoo, however, denied this statement before the Magistrate and the Session Court.

On the trial, the prisoners disclaimed all knowledge of the murder, and called several of their relations to prove, that they did not leave their homes on the night of the Hoolee.

The Session Judge (W. Birdwood) was of opinion, that the testimony of the deceased was consistent throughout, and being sanctioned by an oath, was deserving of credit, and he thereon convicted the prisoners, and sentenced them severally to be transported for the terms of their natural lives, subject to the confirmation of the Superior Court.

By the Court of Sudder Foujdaree Adawlut. Mr. W. Simson:—"In this case the evidence of the deceased is entitled to the highest credit. No imaginable reason is supposed or suggested, why the deceased should have charged the prisoners falsely, and his statement is corroborated by concurrent circumstances, and by the deposition of one of the prisoners. The defence and the alibis set up are not, in my

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opinion, worthy of any belief. The evidence is certainly scanty, but it is sufficient to leave no moral doubt that the deceased met his death at the prisoners' hands very much as he states. On the whole, I would confirm the conviction and sentence."

Mr. B. Hutt:—"This conviction rests solely on the statement of the deceased Kondee Mhar, who is represented by the persons who went to his assistance, on his being discovered lying in a wounded state at the gate of the town, to have said, that the prisoners wounded him, and on his deposition to the same effect before the Police authorities, which is recorded; but there is no evidence to shew that the deceased was sufficiently collected to know what he was saying, and the paper recorded as his deposition throws great doubt on this from the abrupt manner in which it breaks off, and which is stated to have occurred in consequence of his being unable to proceed, and this doubt is greatly strengthened by the nature and position of the wound. It is to be regretted that so important a matter should have been neglected. Further, I see great reason to distrust the deposition said to have been made by the deceased, from its containing a description of the size and nature of the wound, which, being on the forehead, it is obvious he could know nothing whatever of. This must have been an addition by another, and if so, the whole becomes valueless, as it is impossible to say how much more may have been similarly added. Again, the crime is described as having been perpetrated at about 4 A. M. At this time of the morning, from the declining state of the moon, it would be extremely difficult to distinguish another person even near, and it seems most improbable that persons would go to commit such an act without some disguise, which makes it far from improbable that the deceased may have been deceived in the imagined recognition of the prisoners, even if the statement could be trusted. I would not then convict the prisoner on such evidence, even though one of the prisoners' statements seems to render it probable that they were concerned in the crime."

The Court being divided in opinion, the case was referred to a third Judge.

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The case of APPA WULUD BALLAJEE and others.

Minute recorded by J. Pyne, Esquire, Puisne Judge:—"The declaration of the deceased, which was subsequently reduced to writing when he was on the point of death, before constituted authority, and under an oath, is, I am of opinion, deserving of every credit. On being visited immediately after the assault, and while he was lying on the spot where it took place, he without hesitation affirmed that the prisoner Appa struck the blow, and the other two prisoners were aiding. The day afterwards, before the Police Amildar, he confirms this statement, and while in the act of delivering his evidence becomes speechless. There is no assignable cause why he should have made a wilful misrepresentation, or why in *articulo mortis* he should have persisted in the same; and though the evidence of an accomplice cannot be adduced in support of the prosecution, the confession of the prisoner Sheckoo stamps the evidence with the mark of truth. There is no cause to doubt that the deceased had his faculties about him when he recognized the prisoners; and as no motives are assigned or attempted to be assigned for his falsely charging them with his death, I am prepared to confirm the conviction and sentences."

The conviction and sentences were accordingly confirmed, but, the Court, in communicating this resolution to the Session Judge, remarked, that it would have been more correct, that these prisoners should all have been charged as principals, there being no possible distinction between the persons holding the victim down and the one who, while he was so held, struck the fatal blow. Again, the Court observed, that the deed was represented to have been committed with a hatchet. An instrument of this description appeared to have been forwarded to the Session Court by the Magistrate, and to have been laid before that Court, yet its connexion with the case, or the place where it was found, did not appear to have entered into the Session Judge's investigation.

THE CASE

of

SHEWPOOREE KULLIANPOOREE.

Charge—*Murder*.

1843
17th July.

SHEWPOOREE KULLIANPOOREE'S case.

The failure on the part of the prisoner to prove an alibi is evidence for the prosecution.

The prisoner on being arraigned before the Session Court of Ahmedabad on the 30th of May 1843, was indicted for poisoning one Kulliangur Jetgur Gosaen.—Plea, not guilty.

The facts of the case were thus stated by the Session Judge (W. C. Andrews). "The Session Judge finds, that on the 15th of Falgoon Shood Sunwut 1899, corresponding with Wednesday the 15th of March 1843, at the Kullianpooree Mhut, near the village of Sursa within the Zillah of Ahmedabad, Pooranpooree and Kulliangur were both seized with vomiting, and other symptoms of having been poisoned, immediately after having drunk some decoction of spices, that the prisoner Sewpooree gave them to drink; that Pooranpooree continued ill for a few days, and afterwards recovered, but on the 10th day Kulliangur died, never having rallied in the mean time. These facts the Session Judge considers fully established, notwithstanding the evidence of the witnesses examined in behalf of the prisoner to prove an alibi, and who were named by him first in his examination before the Assistant Magistrate, and therefore are of very doubtful credibility. The vessel in which the decoction was prepared was subjected to an immediate examination by one Kussunpooree, and the white sediment or powder discovered in it was immediately shewn to the people sitting by; the vessel was then put away by Kussunpooree, and by him delivered to the Mamlutdar on the third or fourth day after. It would have been more satisfactory, if the vessel had been taken immediate possession of by the village Police authorities, instead of having been left in Kussunpooree's possession; but notwithstanding this neglect, the Session Judge conceives from the evidence of the parties who saw the vessel at the time, that Pooranpooree and Kul-

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liangur were first taken ill, that it was received by the Mamlutdar, and by him sent to the authorities at Kaira, and examined by the Civil Surgeon, who ascertained the sediment to be arsenic, without having been in the mean time tampered with while it remained in Kussunpooree's possession, for from the adherence of the powder to the vessel, it must, in the opinion of the Civil Surgeon, have been boiled in it. From the discovery of arsenic in the vessel, no doubt remains but that poison had been mixed up with the decoction, of which Kulliangur partook and died from the effects of the poison.

The Session Judge has next to consider how far the evidence recorded in the case goes to prove the guilt of the prisoner at the bar, as the person who procured and mixed poison with the decoction. To establish this point, there is the direct and positive statement of Luckmeedass Rugnathdass,* deceased, taken before the Police authorities, and confirmed before the Assistant Magistrate, and that of Natha Thobun before this Court, who have both deposed to having seen the prisoner Sewpooree shake something out of a piece of cloth into the decoction while on the fire, though they could not tell what it was, and the corroboratory evidence of the other witnesses, who depose to the prisoner Sewpooree's having given some of the decoction to Pooranpooree and the deceased Kulliangur to drink, though he denies having been present at the time, and his determined refusal to partake of it himself, though pressed to do so by the deceased Kulliangur. The Session Judge is of opinion, therefore, that there is little doubt, but that the prisoner Sewpooree was the person who put the arsenic into the decoction with intent in the first instance to poison Pooranpooree, who had prepared it for his own drinking on account of enmity towards him, arising from a dispute respecting the property belonging to the Mhut.

On the other hand, it is to be observed in favor of the prisoner at the bar, that the witness Luckmeedass Rugnathdass

* This witness died after the commitment of the case.

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SHEWPOOREE KULLIANPOOREE'S CASE.

died before the trial of this case, and therefore he was not subjected to a cross-examination by the prisoner before this Court, and that in some points of his evidence the witness Natha Thobun prevaricated, and his statement before this Court was in some respects inconsistent with that made before the Police authorities, which considerably weakens the value of his testimony; and there is also the negative testimoney of the other persons who also were sitting by the stove or fire-place on which the decoction was boiling, who state that they did not see the prisoner Sewpooree touch the vessel, or put any thing into it, which they think, from their position, they must have seen had he done so. At the same time, however, the Session Judge does not consider this negative testimony sufficient to contradict the positive assertions of the other two witnesses, of their having seen the prisoner shake something into the vessel; and it is likely, that the persons sitting by did not watch with any particular accuracy, what was done to a preparation of which they were not to partake, or that if they had seen any thing put in, that it would not have excited any suspicion or comment at the time, which accounts for the two witnesses Luckmeedass and Natha having remained silent on the subject until afterwards, when the illness of the two Gossains brought it forcibly to their remembrance.

The prisoner urges in his defence, that the deceased Kulliangur was his friend, and why therefore should he have poisoned him; but this tells as much against him as for him, for why should Kulliangur in that case have falsely accused the prisoner on his death-bed; and it is not improbable that prisoner's motive in so strongly urging his deceased friend to drink of the decoction was, that suspicion might thus be removed from himself in case of a fatal result ensuing to Pooranpooree.

The Session Judge admits that there is in the case, as there must be also in almost every such case, some reasons for doubt, and points that would admit of being more satisfactorily and conclusively cleared up; but on a revision of the whole case, the Session Judge is of opinion, that the evidence

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against prisoner, both direct and corroborative, is sufficiently strong to warrant his conviction of the charge preferred against him." The prisoner Sewpooree Kullianpooree was accordingly convicted of the Murder of Kulliangur Jetgur Gosaen, and sentenced to be hanged by the neck until dead, subject to the confirmation of the Superior Court.

On the case being laid before the Court of Sudder Foujdaree Adawlut, the Judges present recorded the following minutes.

By William Simson, Esquire:—"In this case there is much positive evidence, and some inferential. The worst points in the prisoner's defence are his denial that he gave the decoction to the deceased, and his attempt to prove an alibi, both of which are evidently false.

"Upon the whole, I think the Judge has summed up very ably, and I agree in the conviction, only I would rather transport for life. There is a slight defect in the evidence for the prosecution, which may justify the remission of the extreme penalty."

By Benjamin Hutt, Esquire:—"It appears that the prisoner was present near the fire at the time the drink was preparing; this is testified by several persons, and his denial that he was present, and his attempt to prove that he was elsewhere, only the more strongly fix the guilt on him. It is true, that some of those present say they did not see the prisoner put aught into the pot, which they suppose they would have seen had he done so, but another says he distinctly saw it. That the drink was the cause of death, there is no reasonable doubt. The sediment found in the pot having been analyzed by scientific persons, has been declared to be arsenic. Pooranpooree declares he looked carefully at the ingredients he put into the pot, and there was no powder mixed with them then. The pot was, by a most fortunate coincidence of circumstances, carefully cleansed just before, so that the crime seems most fully established against the prisoner. I would confirm both conviction and sentence."

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By John Pyne, Esq.:—"My colleagues have confirmed the conviction, and I concur in this; but in consequence of the death of the witness Luckmeedass, the fact of the prisoner's having put the poison into the vessel is weakened, to the extent of the prisoner having been denied the privilege of subjecting this witness to a cross-examination. This most important point is, therefore, limited in proof to the testimony of a deceased witness, and although his evidence is deserving of credit, it is less satisfactory than if it had been affirmed before the Sessions Court. The other evidence is purely circumstantial, and in the absence of proof of the motives which induced the prisoner to cause the death of Kulliangur, I am disposed to award the mitigated sentence of transportation."

The prisoner was accordingly sentenced to be transported for life.

THE CASE

of

HAJA TEJA.

Charge—*Murder.*

1843
4th September.

HAJA TEJA'S case.

The prisoner in this case convicted of murder upon circumstantial evidence and upon the contradictions apparent in his own statements, which clearly proved his defence to be false. Sentence—transportation for life.

The prisoner, Haja Teja, being arraigned at the bar of the Session Court at Ahmedabad, on the 5th day of August 1843, was indicted for the murder of one Munjee Haja.—Plea, not guilty.

The Session Judge (W. C. Andrews) recorded his judgment in the following terms:—"The Session Judge finds, that on Thursday the 6th of July 1843, the prisoner Haja Teja, and the deceased, Munjee Haja, both residents of the Kusba Dundooka, went together to gamble at Padana, a village about three miles distant from Dundooka, and that they continued gambling together with other Colies of Padana till

early on the afternoon of the following day, when the party broke up, the deceased having won to the amount of about Rupees 7. 8 from the prisoner Haja Teja, which sum was paid by borrowing it of Gujja Jeewa. The deceased Munjee and the prisoner then left the house in which the gambling had taken place, and having first gone to the shop of Gujja Jeewa, of whom the deceased purchased one Rupee's worth of tobacco, they left the village together for Dundooka. One of them had a stick resembling a bamboo in his hand, but neither appear to have had any other offensive weapon. The following morning, Saturday, being the third after his son left with the prisoner for Padana without having returned home, his father, Haja Ram, went to the prisoner to enquire what had become of his son. The prisoner told him, that he had left his son at Padana, but that perhaps he had gone to another village to gamble. The father then went to Padana, where he heard from Gujja Jeewa, that his son having won Rupees 7. 8 from the prisoner, and got some tobacco, had left the village the previous afternoon with his winnings in company with the prisoner. The father then set out on his return home, and looking about as he went along, discovered the corpse of his son Munjee lying in a water-course. The corpse bore evident marks of violence. Suspicion fell upon the prisoner, as having been last seen in his company, but on searching his house nothing was found belonging to the deceased, who had been robbed of every thing, even of his clothes. So far there is no evidence of the guilt of the prisoner, but it is further proved, that on the Saturday, being the day after the gambling was concluded, the prisoner returned to Padana, and paid to Gujja Jeewa the sum which he had borrowed to enable him to pay his gambling debt to the deceased. The money was repaid in the same description of coin in which it had been advanced, but the coins could not be identified. The contradictory statements given by the prisoner of the manner in which he became possessed of this money, constitute the principal evidence of his guilt. He first stated, that he procured it from his mother; after-

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wards, on her denying this, he stated that he had taken it from his accumulated winnings that he kept in his house; and before this Court he stated, that it was part of his earnings for grazing cattle, and the price of a calf sold by him about a year ago. It is to be observed, also, that in contradiction of the statements of all the gamblers and others, he states, that he and deceased were partners, and that they both lost, but that he paid deceased's share of the losings, as well as his own, as the money was procured upon his responsibility. It is further worthy of remark, that his statements of the deceased's having gone back alone to Padana to obtain tobacco from Gujja Jeewa, and of his having fallen in with and accompanied Malla Wagree to Dundooka the same evening, are contradicted by Gujja Jeewa and Malla Wagree, respectively. The prisoner caused his mother to be called in support of his assertion respecting the sale of the calf, but she contradicted his statement in some important points. She stated, the calf was sold for Rupees 23, about three months ago; that, except the Rupees 7. 8 taken by the prisoner to pay his losses in Padana, all the rest was spent in grain, and in the maintenance of the family, whereas the prisoner states, that the calf was sold about a year ago, and he had other money, his earnings for grazing cattle, of which Rupees 7. 8 are still remaining in his house. It is to be observed also, that the mother's present statement directly contradicts that made by her before the Police authorities." The Session Judge, therefore, after a full consideration of all these circumstances, was of opinion, that although there was no direct evidence, yet the circumstantial evidence in the case was so strong, as clearly to fix the guilt of the murder upon the prisoner, and he accordingly convicted the prisoner, and sentenced him to suffer death, subject to the confirmation of the Superior Court.

The Sudder Foujdaree Adawlut. Minute by Mr. W. Simson, Puisne Judge:—"There can be little doubt, that the prisoner, Haja Teja, murdered the deceased, and I am disposed therefore to confirm the conviction, commuting the

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sentence to a long term of imprisonment. The want of any positive evidence that the deceased was killed by the prisoner forbids confirmation of the capital sentence. The inference to be drawn from the several evidences set-forth in the Judge's finding, is hardly to be rebutted; the prisoner was the last person seen in company with the murdered man—he was observed near the spot where the corpse was found on the evening of the day on which they together left the village where they had been gambling—he repaid the very next day the money he had borrowed from Gujja to discharge his losses at play, but his account of how he procured the money for that purpose is not credible, and his own statement and that of his mother as to their having money and how it was obtained vary so materially, that it is evident to me both are false. Although I consider there is sufficient evidence for conviction, I cannot consent that the prisoner shall be hanged on the circumstantial testimony adduced."

Minute by Mr. B. Hutt, Puisne Judge:—"It appears from the evidence, that the prisoner and the deceased Munjee set out one morning to go and gamble at Padana, and that they employed themselves at gambling till the afternoon of the following day, when the prisoner, who had lost 7 Rupees 8 annas to the deceased, borrowed that sum of Gujja Jeewa, and paid him, having done which, they proceeded to the house of Gujja, where deceased bought some tobacco, and they both set out together at 4 P. M. to return to Dundooka, distant three miles. At 5 or 6 o'clock, the prisoner was seen sitting down alone a short distance from Dundooka by Mallá Wagree, who, on asking him what he was doing, received for answer, that he was looking for a Banian's buffaloe, which had been lost, and on being further invited to accompany the said Malla, he said no, not till the animal was found. The next day the prisoner and the younger brother of the deceased go together to repay Gujja the sum borrowed, and it was on the same day the father of deceased found the dead body of his son Munjee, whom he had gone in search of, in a water-course by the roadside. The false statement of his object when found by Malla,

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and his declining to accompany him to the town, give rise to the suspicion that he feared that the marks on his clothes or person would in the day-light be remarked, and lead to his detection. The deposition of Malla does not shew that he was examined in respect to the prisoner's appearance at this time, or if he had a stick in his hand, which is to be regretted, for if even no marks of violence on his person or clothes had been observed, if he had manifested any agitation or uneasiness it would have been very strongly corroborative evidence of his guilt; while, on the other hand, the reverse would have been very conclusive in favor of his acquittal. The fact of the prisoner and the deceased's starting at 4 P. M. alone from Padana to go a distance of only three miles, of the prisoner being found about one or two hours after on the same road, but near to Dundooka, to which place they were going home, of the body of deceased being found near the road-side with marks shewing that death had been caused by the use only of such a weapon as the prisoner seems to have carried, together with the prisoner's contradictory statements about his and the deceased's losings, and where he got the money to repay his debt to Gujja, are strong grounds of suspicion, but alone, are not, to my mind, sufficiently conclusive evidence of his guilt to justify a conviction, for no part of the property stolen (which included all the deceased's clothes, and two rings, besides money) has been traced to him and identified, nor is any enmity proved to have existed between them; it is very possible that the prisoner's statement regarding *Munjee's having* gone back again to Padana was true, and that he was then murdered by some other person for the sake of his property; I would therefore acquit the prisoner, and order his discharge."

The Court being divided in opinion, the case was referred to a third Judge, when Mr. J. Pyne recorded the subjoined minute:—

"The summing up of the Session Judge has brought together in one view the most prominent points against the prisoner, and it is, taken as a whole mass of circumstantial

evidence, of so criminating a character, as to make an irresistible impression upon the mind, that he was the murderer of the deceased. There is but one circumstance that in my mind could shake this testimony, and that is the return of the deceased from the tank to Padana, and the possibility that on his way back to Dundooka he might have been there murdered after the prisoner had left the spot. The prisoner says he did return, the object being to obtain tobacco. This is positively denied by the witness Gujja, who affirms, that before they left the village, they in company made a purchase of the tabacco, which the deceased tied up in his handkerchief. The evidence is clear up to this point, that the parties were associates in gambling, repaired together to the scene of play, that the prisoner lost, borrowed and paid, Rupees 7. 8 to the deceased; that they left the village in company at about 4 P. M., and, as acknowledged by the prisoner, proceeded together to the tank, where, at about 5 P. M., the prisoner was found sitting alone, and where, the following morning, the corpse of the deceased was discovered hid in a water-course with marks of violence upon it. It is further deposed by Malla Wagree, that when he saw the prisoner at the tank he was eating some bread. Now the witness Hurruck states, that she gave the bread to Munjee, the deceased; from this it may be inferred, that the deceased, if he had left the prisoner as asserted by him, must have done so but a very short time previously, and if, as further stated, he had gone to procure tobacco, and he was waiting for him, what possible motive could he have for saying, that he was out looking for a stray buffaloe? or if the alleged reason of the deceased's return for tobacco was true, why should the prisoner have told the father of the deceased that his son was at Padana, or perhaps had gone to gamble at some other village? Upon these evidently false statements, follows the condemnatory fact of his paying back the next day the precise sum the deceased had upon his person. The contradictory statements of the prisoner himself, as to how he became possessed of such a sum, and the discordant testimony of his mother, the only witness on this point, are well remark-

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ed upon by the Session Judge. If an *alibi* be set up, the prisoner failing to substantiate the plea, his case is held desperate, I cannot view the justification set up by this prisoner in any other light than self-condemnatory; nor do I think, so many circumstances all leading to the same conclusion could have been thrown together by chance; I am therefore compelled, though the evidence is not direct, to give such weight to the secondary description of proof as to confirm the conviction, though as it rests upon circumstantial evidence, I would remit the capital punishment and award transportation."

The conviction of the Session Judge was accordingly confirmed, and the sentence mitigated to transportation for life.

THE CASE

of

MYPUTSING BIN HEERASING.

1843
18th September.

Charge—*Murder.*

The case of MYPUTSING BIN HEERASING.

This trial was held before J. W. Hunter, Esq. at Dhoolia, on the 11th of August 1843, when the prisoner was indicted for the murder of one Bhowanee Pursand.—Plea, not guilty.

The prisoner in this case, who was convicted of killing the deceased at his own request, was held guilty of murder, and deserving of punishment only short of death.

It was proved, that the prisoner Myputsing, Bhowanee the deceased, his brother Kalka, and one Bindah, had deserted from the 22nd Regiment of Bombay Native Infantry, stationed at Malligaum in Khandeish. It also appeared, that the Sheikdar of Nawapoor, on receiving information that these deserters had been apprehended by his Dessai at Raipoor, sent on the morning of the 2nd of February 1843, some peons under one Sheik Nadir to take charge of them. On reaching Raipoor, distant seven miles from Nawapoor, Sheik Nadir found the deserters, armed with swords, but

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guarded by a number of Bheels. The deserters consented to proceed to Nawapoor, but under a sense of honor refused to deliver up their swords. Sheik Nadir seeing they were peaceably inclined, allowed them to retain their swords, and the four deserters under the escort of the peons and some Bheels started immediately for Nawapoor. This party were within a mile of Nawapoor, when Humed Khan and some Sawars met them. Humed Khan, perceiving that the deserters had swords, gave immediate orders to disarm them; upon this, the deserters drew their swords and fled, declaring with an oath, that they would rather die than give up their arms. They were again and again called upon to surrender, but continuing to fly, Akharia Bheel discharged an arrow, which struck Kalka on the back a mortal wound. Bhowanee seeing his brother fall, exclaimed, "Why should I now survive? better that we should die here than shew our faces at Malligaum;" then wounding himself in the stomach, he implored the prisoner Myputsing to kill him; the prisoner at first hesitated, but on Bhowanee kneeling down and offering his neck with a repeated request, the prisoner complied by nearly severing his head from his body at one blow. The prisoner next wounded himself, but only slightly. In the mean time, some sepoys of the 22nd Regiment, who had been in pursuit of the deserters, arrived, and to them the prisoner delivered his sword. Bindah, the fourth deserter, had in the flight separated from the other three, and was not present when Bhowanee was killed, but he was however subsequently apprehended and taken together with the prisoner Myputsing in custody to Nawapoor. Kalka died of his wound on the following day, viz. the 3rd of February 1843.

The prisoner in his defence, charged one of the Bheels with the commission of the murder, stating that when he and the other deserters fled, the Bheels pursued them, wounded Kalka with an arrow, and killed Bhowanee with a sword.

The Session Judge, in judging of the act, intention, and cause of the murder, found nothing sufficiently extenuating to divest the act of the criminality which constitutes murder,

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and therefore convicted the prisoner of that offence; but nevertheless, considering that there were circumstances in this case that separated it in a degree from the atrocity usually attendant on murder, he was of opinion, that the ends of justice would be fully attained without having recourse to capital punishment, and therefore sentenced him to transportation for life, referring at the same time his proceedings to the Sudder Foujdaree Adawlut for confirmation.

By the Court of Sudder Foujdaree Adawlut, Mr. W. Simson:—"If intentional homicide constitutes Murder, then is the prisoner rightly convicted. He slew the deceased at the latter's request, and while both were under great excitement. The deceased's brother had first been killed by the Officers of the Police in an attempt to escape from custody, having been apprehended as a deserter, and the prisoner was also a fugitive from justice, a deserter from his Regiment, and at the very moment in arms against the Law. The Judge denominates the feeling by which the prisoner was actuated, as a false sense of honor, but I think there was as much of rage and disappointment at being captured by the Police, as of wounded pride. Desertion is severely punished in the Army, and fear of the consequences may have aggravated the prisoner's excitement. Among Natives, also, the sacrifice of one's self, or of a relation, or even of any human being, is believed to bring down vengeance on those by whose act such sacrifice is precipitated. Altogether, I see no cause or circumstance of a character sufficiently extenuating to induce me to recommend a remission or mitigation of the sentence. I think the sacrifice of Bhowanee was done by the prisoner under the combined passion of rage, revenge, and fear—sudden and unpremeditated certainly, but deserving punishment only short of death, in order to deter others from such violence and outrageous acts of insubordination and blood."

Mr. B. Hutt:—"That the prisoner killed the deceased is most certain, and the only question that arises is the amount of punishment that should be adjudged for the offence. It is true, there was no premeditated malice on his part shewn, but

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as it obviously proceeds from a wicked and depraved disposition, and while in open defiance of the laws, and no extenuating circumstance appearing, I would confirm conviction and sentence."

The conviction and sentence were accordingly confirmed.

THE CASE

of

KUSLA JEEJEE and others.

Charge—*Gang Robbery*.

1843
16th October.

The case of KUSLA JEEJEE and others.

It appearing that one of the prisoners in this case had been induced to confess to the crime of Gang Robbery under a promise of pardon unauthorizedly given, the Sudder Foujdaree Adawlut held, that a confession so obtained was not admissible in evidence against the prisoner, and in the absence of other proof he was acquitted.

Although confessions improperly obtained are not admissible in evidence, yet any facts or testimony which may be brought to light and obtained in consequence of such confessions may be received in evidence. Six prisoners convicted in this case on evidence of this nature.

The prisoners, Kusla, Gobur, Kava, Hurreea, Mugra and Dulla, were indicted for plundering two chests of Opium, of the value of Rupees 2,250, on the morning of the 6th of June 1843; and the prisoners Lucka, Rama, and Kessur as accessaries with concealment after the fact.

At the trial, which was held before the Session Judge of Ahmedabad, on the 9th of August 1843, the principals pleaded guilty, but the accessaries, not guilty.

It appeared, that one Kursun with others were proceeding from Palee to Gogo, in Guzerat, in charge of nine camels loaded with opium—that they were attacked about 3 A. M on the 6th of June 1843, near the village of Burwalla, within the Zillah of Ahmedabad, by a gang of ten robbers, who succeeded in plundering and carrying off two chests of Opium. Kursun, and the other persons in charge of the camels, deposed, that when they were attacked it was very dark, and that consequently they were unable to recognize any of the robbers. It was further proved, that Bahadur Khan, a Naib Russaldar of the Guzerat Irregular Horse, on receiving intelligence of the robbery, went with fifteen of his Suwars to Burwalla, when some of the villagers reported, that one of the robbers was willing to disclose his associates, if assured of

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pardon. Bahadur Khan consented, and under his promise of pardon, the prisoner, Kusla, came forward and made a full confession, and upon Kusla's information the other prisoners were apprehended, and much of the opium recovered, some of which was pointed out by Kusla, concealed in the houses of his associates, and some buried near the village.

Clause 1, Section XXXVII. Clause 5, Section I. Regulation XIV. of 1827.

The Session Judge (W. C. Andrews) convicted the prisoners Kusla, Gobur, Kava, Hurreea, Mugra, Dulla, and Rama, and sentenced them to suffer each five years' imprisonment with hard labor, with the exception of the accessary Rama, whom he sentenced to two years' imprisonment with labor, and the prisoners Lucka and Kessur he acquitted. The Session Judge, in submitting his proceedings in this case to the Sudder Foujdaree Adawlut, made a recommendation for a mitigation of punishment, or for a pardon, in behalf of the prisoner Kusla Jeejee, on the grounds, that his confession was made under a promise of pardon, unauthorizedly given by Bahadur Khan, the Naib Russaldar of the Guzerat Irregular Horse.

By the Sudder Foujdaree Adawlut. Mr. B. Hutt:—"It does not appear that any of the robbers were recognized, or any clue whatever obtained of them by the police, and that the discovery which led to the apprehension and conviction of the prisoners and the restoration of some of the stolen property, was a voluntary act on the part of the prisoner Kusla Jeejee, influenced by the promise unconditionally given by Bahadur Khan, Naib Russuldar, that he should be pardoned. It is very true, that Bahadur Khan had no authority to make the promise, but this the prisoner Kusla Jeejee, who is a poor Coolee, could not know, and the rank that Bahadur Khan bears would give great weight to his assurance, and encourage the belief that he had the power. It is always of great importance that good faith should be preserved; I would, therefore, with reference to a precisely similar case of Purthum Hurya decided on the 20th of February 1829, acquit this prisoner, and order his discharge, his confession having been obtained by illegal means; but I would also propose,

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that he be handed over to the Magistrate for such precautionary measures as he may deem proper, and that the Magistrate be referred to the Court's Circular Orders Nos. 24 and 54, dated the 20th of February 1829, and the 22nd of February 1831, and be particularly requested to communicate to the commandant of the Guzerat Irregular Horse the Court's wish, that he enjoin on all the Native Officers and men of his Russalla strict conformity thereto."

Mr. W. Simson concurring in this minute, the Court resolved to adopt it as the Resolution. The sentences on the other prisoners were not disturbed.

THE CASE

of

AMBIA BIN KAN MATRA.

Charge—*Murder.*

1844
22nd April.

AMBIA BIN KAN MATRA'S case.

The prisoner convicted of murder, on the positive recognizition of the deceased, as stated in his deposition made shortly before death, corroborated by other circumstantial evidence.

The deposition of the murdered man taken by competent authority shortly before death and proved by two or more witnesses is admissible evidence, even if taken in the absence of the accused.

This prisoner was arraigned before the Acting Session Judge of the Konkun, on the 15th of March 1844, charged with the Murder of one Myah by deliberately discharging at him a gun loaded with powder and shot, and thereby causing his death.—Plea, not guilty.

The deposition of the deceased Myah, taken on solemn affirmation by the Mamlutdar, on the 2nd of December 1843, in the presence of the village Foujdar Hus-patell, the deceased's brother Bundoo, and his mother Bhagee, was proved by them to have been made by the deceased, eight days previous to his death, while he was in the full possession of his senses. The prisoner, however, was not present when this deposition was made. It set forth, that about 8 P. M. on the 1st of December 1843, the deponent was feeding his cattle close to the road-side, near the village of Wowlee in the Konkun,

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when the prisoner and one Poshia passed by; that an hour afterwards, as the deponent was returning home, and when he was within about a hundred and fifty yards of his own house, a man discharged a gun at him from a distance of about ten or twelve paces; that it was a bright moonlight night, and that he distinctly recognized the man who discharged the gun to be the prisoner, and on his running away the deponent called out, "Ambia Kan Matra, where are you going, after having shot me?" that he shortly afterwards fell, from loss of blood, and remained for a time insensible. Bhagee, the deceased's mother, deposed, that she heard the report of a gun followed by the cries of her son, and on proceeding to the spot whence the cries issued, to finding the deceased lying on the ground wounded, and to his charging the prisoner with having shot him; that she then returned to the village, and reported the occurrence to the Foujdar and others, who, on repairing in company with Bhagee to where the deceased was lying, also heard him charge the prisoner with having shot him. The Foujdar removed the wounded man to his house, which adjoined that of the prisoner, and afterwards went to the prisoner's house, where he found a gun and a bag containing some shot. He then accused him of the murder, but the prisoner denied all knowledge of it, stating that he had been asleep. The inquest report proved, that the deceased had received ten shot wounds on his left arm, chest, and forehead; that these wounds, (which, the jurors were of opinion, were the cause of death,) varied in size, some being large, some small, corresponding with the shot found in the bag in the prisoner's house. The evidence also proved, that enmity existed between the prisoner and the deceased.

The prisoner in his defence urged, that he was asleep in his house at the time the Murder was committed, and called in his defence his mother and wife, who in general terms supported him in his assertion.

The Acting Session Judge (J. G. Lumsden) recorded his finding as follows: "As clear a case of deliberate murder as can ever be expected to be proved, where the murderer and

the murdered are by themselves at the time of the commission of the act, has been made out against the prisoner in the present instance. It is proved, that the prisoner returned home on the evening of the murder in a rather intoxicated state from a marriage in a neighbouring village, and that, though he denies it, he passed the deceased on the road. It is proved, that he had a serious quarrel with the deceased a month before. It is proved, by the universal admission of the witnesses, that at the time the shot was fired, it was a bright moonlight night, and that a person could be easily identified.—From the nature and description of the wounds, as set forth in the inquest report, the shot must have been fired very near. The bag of shot found in the prisoner's house was unopened when the members of the Inquest gave their evidence, and described the wounds as having been caused by mixed shot, small and large, and such shot the contents of the bag proved to be, when opened before the Court. It is most distinctly proved, that the deceased from the first clearly identified the person of the accused as his murderer. In reading over his deposition it is impossible to arrive at any other conclusion. His very exclamation at the time evinces his certain recognition of his murderer, and he never up to the hour of his death hesitated or faltered in his perfect conviction of the fact. His deposition given eight days before his death is distinct and circumstantial, and is shewn by the evidence of Hus-Patell, the deceased's brother Bundoo, and his mother, the only parties present when it was taken the following day, except the Mamlutdar, to have been given by the deceased while in his senses.—Only one witness, among those present when the deceased was carried home, denies that the charge was immediately brought by the deceased. This witness says, he never heard the prisoner's name mentioned; but if he have not deliberately for-sworn himself, as the Session Judge strongly suspects, he may have arrived afterwards. The fact, however, which establishes the truth of the concurrent evidence of the other witnesses, and which proves that the deceased did immediately recognize and accuse the prisoner on

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the spot where he fell, as the very nature of his statement strongly confirms, is a fact admitted by the accused. Hus-Patell and the relations of the deceased, after carrying the deceased home, immediately went to the prisoner's house and arrested him. If other corroboration of guilt were required, we have it in the conduct of the accused. It is proved that when the gun was fired, the alarm was instantly spread through the village, and that the report was heard by several: the villagers assembled; but though the prisoner's house joined that of the deceased, or in the words of one of the witnesses, though one rain fell upon both roofs, and though the report of the gun, and the cries of her son, first gave notice to the mother of her bereavement, no one issued from the guilty house. Even when the crowd approached close to it, the prisoner did not come out. He says first, that he was awoke by the bustle and cries. In that case, he would naturally have gone out, like the other witnesses, to enquire into the cause. He states secondly, that he was not awoke until Hus-Patell came to his house, but Hus-Patell had seen the deceased carried to his own house, which is a part (as it were) of the accused's, and it is impossible to credit that the prisoner could have slept through the disturbance which such an event as this murder must have occasioned." The Session Judge therefore came to the conclusion, that the prisoner, heated with drink, and exasperated with the recollection of a quarrel unappeased, deliberately fired a gun loaded with shot at the deceased only a short distance off, and that he was fully identified by the latter. The Session Judge then convicted the prisoner of wilful murder, and sentenced him to be hanged by the neck until dead, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut.

The Court of Sudder Foujdaree Adawlut (present A. Bell, B. Hutt, and H. Brown) concurring in the finding of the Session Judge, confirmed the conviction and sentence, but remarked that the state of the gun, which had been found in the prisoner's house, should have been examined at the time, and the result recorded in the proceedings.

THE CASE

of

BAPPIA WULLUD ROWJEE.

Charge—*Murder.*

1844
6th August.

BAPPIA WULLUD ROWJEE'S case.

The prisoner in this case was convicted of murder, on evidence which proved, that he was last seen with the deceased, dragging him along by the hair, with a drawn sword in his hand; that about ten days afterwards a skeleton was found in the direction the prisoner was seen dragging the deceased, with the scull severed from the body, and some articles of wearing apparel were also found near the skeleton, which were identified as the property of the deceased; that the prisoner had absconded, and his mistress deposed that he admitted to her that he had killed the deceased. Sentence, transportation for life.

This prisoner was tried before the Session Judge of Ahmednuggur, on the 2nd day of July 1844, for the wilful Murder of one Wittoo Wullud Crishnah.—Plea, not guilty.

The testimony of the witnesses for the prosecution was as follows.

Dhondee Wullud Nowjee deposed, that he was the Foujdar Patell of the village of Nephar, within the Zillah of Ahmednuggur; that about 5 P. M. on the 22nd of April 1844, having received information of a corpse having been discovered in a nullah in the field of Ekinshah Fukeer, he went to the spot, and there found a man's scull, some long locks of hair, and a number of human bones scattered about; that from the peculiarity of the teeth, and the long hair, he believed these to be portions of the remains of the deceased, Wittoo, and he was confirmed in this belief by also finding near the spot, a cholna, an iron bracelet, and a silk kurgota, which he identified as having belonged to the deceased; that deponent then returned to his village, and discovering that Wittoo had been missing for ten days, he proceeded to the house of Guzzee, the prisoner's mistress, with whom he knew the deceased had been intimate; that on pressing Guzzee to tell him what had become of Wittoo, she admitted that the prisoner had killed him, and entered into many particulars concerning his death,—this information deponent duly reported to the Mamlutdar.

Guzzee deposed, that on the night of the 13th of April 1844, the deceased came to her house about nine o'clock, and while in conversation with her and one Aheelee, the prisoner casually came in armed with his sword, and on seeing Wittoo, the prisoner seized him by the hair, and kicked

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and dragged him out of the house; that Wittoo called out for mercy, when the prisoner drew his sword, and threatened to kill him if he uttered a word; that deponent attempted to separate them, but the prisoner struck and kicked her; that the prisoner holding Wittoo by the hair in one hand, and with a drawn sword in the other, continued to drag him through the garden; that deponent followed them as far as Fureed Bawa's tomb, but fearing lest the prisoner should detect her watching, she then returned to her house, where she picked up Wittoo's pugree, kadee, and kacha, which had fallen during the scuffle; that about two hours afterwards the prisoner came home, that from his wild and agitated appearance, and from some spots of blood which she observed on the scabbard of his sword, she knew he had killed Wittoo; that very early on the following morning, the prisoner left home for Chundore, saying that if she mentioned what had occurred, he would murder her; that after the prisoner had gone, deponent took Wittoo's pugree, kadee, and kacha, to her sister Ambee, and left them in her charge for two days; she then removed them, and concealed them in some kurbee, near one Kannoo's house; and that subsequently, when Dhondee Patell came and asked her what had become of Wittoo, she told him the above particulars.

These particulars, as given by Guzzee in her deposition before the Court, corresponded with those admitted by her to the witness Dhondee Patell, with the exception, that Dhondee stated, Guzzee had told him, that the prisoner on first seeing Wittoo in his house struck him a blow on the mouth with the butt end of his matchlock, and knocked out two of Wittoo's front teeth. This point was of importance, inasmuch as, in the upper jaw of the scull found, two front teeth were wanting. Guzzee was cross-examined by the Session Judge on this point, but denied that such was the case.

Aheelee deposed, that she was niece to Guzzee, and was at her house on the night in question, and in her deposition confirmed generally the particulars given by her aunt Guzzee.

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Ambee admitted, that she received from her sister Guzzee a pugree, a kadee, and a kacha, belonging to Wittoo, and that she concealed them under her pillow for two days, when Guzzee took them away; and Kannoo affirmed, that the Police found the same articles in some kurbee near his house.

The Inquest Report stated, that a Jury had been assembled on the 23rd of April 1844, to examine the remains of a dead body discovered in a nullah in the field of Ekinshah Fukeer; that the Jury had found a number of human bones, and among others a scull, which was very perfect with the exception of two front teeth, which were wanting in the upper jaw; that the scull and part of the neck was separated from the body; that one of the vertebral bones had been cut as with a sword or other sharp instrument, for it was not divided at a joint; there were some marks of dried blood on the sides of the nullah, and a cholna, an iron bracelet, and a silk kurgota, were lying scattered about near the spot, and that they identified these as having been the property of Wittoo Wullud Crishnah. The Jurors stated, that they had personally known Wittoo, and from the peculiarity of his teeth, which were very small and wide apart, and from the other circumstances which had come to their knowledge during the examination and enquiry, they were of opinion, that the remains discovered were those of Wittoo, whom they further believed to have been murdered about ten or twelve days previously.

It was also proved, that Ekinshah Fukeer's field was half a mile from the prisoner's house, and that Fureed Bawa's tomb was on the direct road between these two places.

The prisoner denied being at Nephar on the night in question.

The Session Judge (J. W. Hunter) on the evidence adduced, convicted the prisoner of the murder of Wittoo Wullud Crishnah, and sentenced him to suffer death, subject to the approval of the Superior Court.

By the Court of Sudder Foujdaree Adawlut. Mr. W. Simson: "I would confirm the conviction in this case, but

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mitigate the capital sentence to transportation for life. In this country a man's concubine is often looked on as his wife, the connexion is held nearly as binding as marriage, and the prisoner's provocation so far palliates his act, in my opinion, as to justify only the infliction of the lesser penalty."

Mr. B. Hutt:—"The evidence in this case seems to be well summed up by the Session Judge. The last that was seen of Wittoo was when the prisoner was dragging him away with a drawn sword in his hand, in a state of much rage from the spot where his mistress Guzzee resided in a garden, and as it is well established that the scull (with other parts of a human body) which was found in the direction he went in, is that of Wittoo, the murder seems decidedly fixed on him, more especially as the time of his absence and the agitation he manifested on returning to Guzzee are strongly corroborative of his guilt. That Guzzee knows more than she has divulged, I very strongly am inclined to think, for under all the circumstances it appears most improbable she should not have gone to look after Wittoo after the prisoner's departure the next day —and going she must have discovered—besides her conduct in regard to Wittoo's articles of wearing apparel, which she picked up (and which he would have sought for had he been alive), greatly dispose me to this view, and all this a close and searching examination might have brought out. It is singular, the question should not have been put to her, whether she had, after the prisoner's departure, gone to look in the direction she had seen the prisoner drag Wittoo on the previous night, and what she had remarked. On the whole, I see no cause to differ from the conviction recorded, but consent to mitigate the sentence as proposed by my colleague, Mr. Simson."

The prisoner was accordingly sentenced to transportation for life.

THE CASE

of

RAMJEE WULLUD ROOPYA AND DHYRYA KHUTRYA, BHEELS.

Charge—*Murder.*

1844
17th September.

The case of RAMJEE WULLUD ROOPYA and another.

The prisoners in this case were convicted of the murder of one Dewlee, a supposed witch, and sentenced by the Session Judge to transportation for life. The Court of Sudder Foujdaree Adawlut confirmed the conviction, but recommended these prisoners to Government as objects deserving of mercy, on the grounds of the gross ignorance and superstition by which they had been influenced, and proposed mitigated sentences, which were finally sanctioned by Government.

These prisoners were tried at Dhoolia, on the 24th of July 1844, by the Session Judge of Ahmednuggur, for the murder of one Dewlee, a supposed witch.—Plea, not guilty.

It appeared, that Kallia, Mooglia, Tegria and the two prisoners, Ramjee and Dhyria, were all members of a Bheel family residing in the village Kunkalla, in the Sooltanpoor Talooka, of the province of Khandeish; that these persons verily believed the deceased Dewlee to be a witch, and that she by her magical spells had caused one Malloo, mother to Kallia, to be afflicted with a lingering illness; that under this conviction they armed themselves with thick sticks, and proceeded in a body, about 8 P. M., on the 13th of January 1844, to the house of one Wunnya, the husband of the deceased Dewlee, whom they seized, and accusing her of being a witch, they forcibly dragged her from her home to a large tree, near to Kallia's house, and having tied a rope round her wrist and suspended her to a branch, deliberately beat her to death with their sticks. On the following morning these persons, in company with their families, absconded; the two prisoners were subsequently apprehended, and upon being taken before the Mamlutdar, severally made confessions, which they confirmed before the Magistrate, but denied on their trial, alleging that the confessions had been extorted. The attesting witnesses, however, on being examined, proved that the confessions had been voluntarily made.

By the Session Judge (W. J. Hunter):—"The prisoners are clearly proved to have committed murder, in having, in company with three others, put to death Dewlee, the wife of Wunnya Bheel; that their intention was to kill is apparent from the weapons used, and that their act was deliberate is equally clear, from the manner in which they prepared to carry their

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intention into effect. There is, however, no doubt that these miserable prisoners, as well as their three accomplices, who appear to have taken the most active part in the affair, were convinced at the time of the perpetration of the deed, and are still so convinced, that their unfortunate victim was a witch, and that she by her sorcery was the cause of the illness of Malloo, the mother of Kallia, and there is as little doubt, that this belief irritated them and roused their superstitious feelings to the commission of this most cruel act of revenge; and although such gross superstitious feelings cannot be admitted as an extenuation, so as to divest the act of the criminality of murder, yet adverting to all the circumstances of the case, the state of the public mind as regards a belief in witchcraft, and the decisions of the Superior Court in similar cases, it would be impolitic if not unmerciful, in the present instance to pass a sentence of capital punishment." The Session Judge, therefore, convicted the prisoners of murder, and sentenced them to be severally transported for life, subject to the final decision of the Superior Court, at the same time recommending the prisoner Dhyrya to mercy in consideration of his youth, eighteen years of age.

On the case being laid before the Court of Sudder Foujdaree Adawlut, Mr. B. Hutt, Puisne Judge, recorded the following minute:—"This is another of those melancholy acts, where a belief in witchcraft has led to the taking of human life. Considering the terrible state of ignorance in which the wild tribes of Sooltanpoor in Khandeish are, the great prevalence of this superstition amongst them, and the different character which such acts assume, when so originating, from an ordinary murder, I would confirm the conviction and sentence, but recommend the prisoners as objects of mercy deserving the clemency of Government, and propose a sentence of seven years' imprisonment with hard labor for Ramjee, and five for Dhyrya."

Mr. W. Simson concurring in the above recommendation, the same was submitted to Government, and by Government finally sanctioned.

THE CASE

of

FUKEERA WULLUD JEEWUN, and others.

Charge—*Conspiracy.*

1844
18th November.

The case of FUKEERA WULLUD JEEWUN, and others.

Three prisoners who were empanelled as members of an Inquest held on the body of one Teja, who had been murdered, purposely returned a false verdict, stating that the deceased had committed suicide; these persons with a fourth who drew out and wrote the inquest report, knowing it to be false, were indicted for conspiracy, and being convicted were severally sentenced to two years' imprisonment with hard labour.

The prisoners Fukeera, Dhondoo, and Dyaram, were arraigned at the bar of the Session Court at Dhoolia, on the 26th of August 1844, indicted for conspiracy, in having combined to pervert the course of public justice, by having on the 3rd of November 1843, at the village of Horapara, within the Sooltanpoor Talooka of the Province of Khandeish, as members of an Inquest held on the body of one Teja, signed and returned a false Inquest Report, inasmuch as they therein stated, that after due inquiry they were of opinion, that the said Teja had hanged himself, whereas they had ample reason to believe, and were moreover fully convinced, that the said Teja had been murdered—and the prisoner Khundoo for having aided and abetted the said conspiracy, by drawing out and writing the said Inquest Report, knowing it to be false.—Plea, not guilty.

The Inquest Report set forth, that the prisoners, Fukeera, Dhondoo, and Dyaram, had assembled by order of the Mamlutdar of Sooltanpoor, to inquire how one Teja, a Bheel, who had died under suspicious circumstances, had come by his death; that they found the body of Teja lying in a shed in the village of Horapara; that one end of Teja's pugree was tied to a post and the other end attached to his neck, but the knot at the end near his neck had by some means become loose; that there was however a mark round Teja's neck which left no doubt that he had been hanged, and as there were no other marks of violence on Teja's body, and as it was proved that Teja was under suspicion of having committed robbery, the Jurors were led to return a verdict of felo-de-se. This Inquest Report was duly attested by the three Jurors, and the signature of Khundoo, the fourth prisoner, as the writer of the Report, was also upon it. The

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evidence for the prosecution proved, that when Teja's body was examined by the Jurors, his arms were tied behind his back so tightly as to have cut the flesh to the bone; that there were marks of violence on his back, as if he had been severely beaten, and two wounds on his chest, the effects of burning, besides the mark round his neck. These facts clearly proved, that the deceased Teja had been murdered by some person or persons unknown.

The prisoners, Fukeera, Dhondoo, and Dyaram, in the first instance acknowledged the Inquest Report, and declared that it was their opinion and conviction after an examination of Teja's corpse. Before the Magistrate they stated, that the contents of the Inquest Report were false, that it had been drawn up by the order of the Mamlutdar, and that although they believed Teja had been murdered, they certified, at the instigation of the Mamlutdar, that he had committed suicide. The prisoner Khundoo also asserted, that he had acted under the Mamlutdar's directions; and to this latter plea the prisoners adhered before the Session Court.

The Session Judge (J. W. Hunter) remarked in his finding, that this was a crime that called for exemplary punishment, not only because the ends of justice had in this case been apparently defeated, and offenders escaped deserved punishment, but that the opportunities to the commission of such a crime were so many in this country, that it was necessary to view it as one of deep malignity. Three of the prisoners had admitted that they had knowingly consented to sign the false report or verdict, and the fourth prisoner acknowledged that he had written the same, but they had all excused themselves on the grounds of having been ordered to do so by the Mamlutdar; such a plea the Session Judge considered it would have been dangerous to have admitted, and doubly so considering the station in life the prisoners held, viz. Brahmins and others of the better class of the community. The Session Judge being of opinion that the charge of conspiracy was fully established, sentenced the prisoners to be severally imprisoned for seven years and three months,

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The case of FUKEERA WULLUD JEEWUN, and others.

seven years with hard labour, and three months in solitary confinement, subject to the final decision of the Superior Court.

By the Sudder Foujdaree Adawlut. Mr. B. Hutt:—"I had some doubt at first whether this could be considered as a punishable offence in the members of the inquest, but as its effect is to defeat the course of public justice, I am of opinion it may. The Session Judge seems, however, to have taken an exaggerated view of the heniousness of the offence, and has passed a severe sentence, and thus brought the case before this Court. I would confirm the conviction, but in reference to the extent of punishment awarded against such offences generally, would mitigate the sentence to six months' imprisonment. The charge against the writer cannot be sustained. I would acquit him, and order his discharge."

Mr. H. Brown:—"I have read the proceedings in this case. It is evident from the confessions of the prisoners, that they all consented to the writing of a false Inquest Report, but endeavoured to exculpate themselves by throwing the blame of their acting so on the Mamlutdar of Sooltanpoor, by whose instructions the Inquest Report was drawn up. This person is dead. I cannot admit that the excuse in any way palliates the crime of which they have been brought to trial. The prisoners state, that they considered Teja, the person whose corpse they inspected, had been murdered, but that the Mamlutdar directed the report to be written, that the deceased had met his death by his own hand. What was the object for which this false report was written? It could have been for none other than to pervert the course of public justice, and to screen those persons who had occasioned the death of Teja. I agree with the Session Judge, that the offence should he severely dealt with, for the Inquest Report is one of the most important documents that can be produced on the trial, and if the members of the Inquest combine and designedly return an opinion which they know to be contrary to fact, I can see no other class of crime under which this can be placed, than that of conspiracy.

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The case of FUKEERA WULLUD JEEWUN, and others.

I think, nevertheless, that the Session Judge has passed too severe a sentence, and I would accordingly propose, that it be mitigated to two years' imprisonment on each of the prisoners."

The case was then referred to a third Judge in regard to the conviction of the prisoner Khundoo, and the punishment to be awarded against the prisoners generally, when Mr. A. Bell, Puisne Judge, recorded the subjoined minute:—"I consider the prisoner Khundoo equally guilty with the members of the Inquest; had he pleaded, that he had acted under their orders, he would have been entitled to an acquittal, but his defence in endeavouring to throw the blame on a person who is unable to defend himself, is as absurd as it is vicious, and concurring as I do with the trying authority as regards the enormity of the offence, and the necessity of preventing its recurrence, I do not feel disposed to disturb the sentence."

The Court finally resolved to confirm the conviction on all the prisoners, but to mitigate the sentence of the Session Judge to two years' imprisonment with labour on each.

THE CASE

of

CHIMEE, BHEWREE, AND JEWANYA.

Charge—*Murder*.

1845
6th January.

The case of CHIMEE and others.

The prisoners, Chimee and Bhewree, were charged with Infanticide, and Jewanya as an accessary before the fact. It was

The trial of the prisoners Chimee and Bhewree for infanticide, and of the prisoner Jewanya as an accessary before the fact, was held before the Session Court of the Konkun, on the 7th day of November 1844.—Plea, not guilty.

The circumstances of the case were thus detailed by the Acting Session Judge (J. G. Lumsden):—"The evidence

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The case of CHIMEE and others.

shews, that the husband of the prisoner Chimee had left his village more than five years, and had not since been heard of; that the prisoner Chimee, his wife, formed not long since an improper intimacy with the prisoner Jewanya, her cousin, a supposed Bhuggut or wizard, who resides in her father's house, and that she eventually became *enciente*. That on her admitting to the police authorities that the prisoner Jewanya was her paramour, the witness Amboo became her security, that the child, when born in due course of time, should not be made away with; that nevertheless, on the 11th of October 1844, the prisoner Chimee did leave the witness Amboo's house, where, for her better security, she then resided, and left it contrary to his wishes. That she went to her mother's, and there gave birth to a female child, which, with her consent, and with the knowledge and instigation of the prisoner Jewanya, was immediately murdered and buried by the prisoner Bhewree, the mother of the prisoner Chimee. There can be little doubt of these facts after a perusal of the evidence, but in the moral guilt of the respective prisoners there is a very material difference, as evinced in the circumstances of the case, and in the conduct of the prisoners subsequent to the act and to the discovery.

proved that Chimee gave birth to an illegitimate child, which at the instigation and advice of Jewanya, the father of the child, was murdered by the prisoner Bhewree in Chimee's presence.

The prisoner Jewanya and Bhewree were sentenced to transportation for life as being the most culpable, and Chimee, in consideration of her youth, 15 years of age, and also of the influence exercised over her by Jewanya, a Bhuggut or reputed wizard, and by Bhewree, her mother, to two years' imprisonment.

"The prisoner Chimee is a very young girl, in appearance almost a child, and has never cohabited with her husband, as she was not of an age to do so prior to his leaving the village. According to the opinion of the Acting Session Judge, she cannot be more than fifteen, if so much, and a witness who has known her from her childhood swears she may be between fifteen and sixteen years of age. That she is comparatively a child is evident. That she has acted under the influence of the other prisoners may be surmised, especially in accusing herself of taking an active part in the murder and burial of her own child, immediately after its birth. That she made this statement on the 12th of October 1844, solely to shield her parent, the prisoner Bhewree, and at the suggestion of the latter, the Acting Session Judge entertains no doubt

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The case of CHIMEE and others.

whatever, especially as her statement* of the 16th of October following, which materially differs from the above, is not only consistent with probabilities, which the other is not, but is supported by the confession of the prisoner Jewanya. This individual admits, that he suggested that the child should be made away with, so as to avoid the disgrace resulting from the birth of an illegitimate child, and that the mother Bhewree, who was then present and aiding her daughter in her accouchement, replied in a way which leaves no doubt as to her meaning, 'that she would do what was proper,' nor does the prisoner Bhewree distinctly deny the murder before the Court. She admits that she did confess she murdered the child, but afterwards, under apparent fear of the consequences, she stated, that she did not know what the Police Authorities may have written in her confession, and again she would give no direct reply to the Court's questions. The most culpable of the three culprits is the prisoner Jewanya, the father of the murdered child, and under whose influence and advice the prisoner Bhewree evidently acted. His immediately leaving the scene of the crime, and resorting where he never resorted before, to the house of the witness Amboo, while the murder was being committed, with the evident intention thereby of establishing an alibi, as it proves, that he was conscious of the guilt and danger incurred, adds in no little degree to the heinousness of his offence, in persuading ignorant women to commit it. The Acting Session Judge must however repeat the entire conviction entertained by him, that the prisoner Chimee has been throughout the tool and victim of the other two prisoners, and that her guilt is confined to an acquiescence, into which she was persuaded, partly perhaps by shame, but certainly also by the more powerful influence of her mother and her paramour. Her decent and natural demeanour before the Court, marked by a silent grief,

* In this statement Chimee said, that Bhewree was present when the child was born; that Bhewree said, she would manage to make away with the child, so that no noise should be made about it, and that Bhewree killed the child by twisting its neck.

and an obvious contrition, offered a strong contrast to the behaviour of the other two prisoners. But as it cannot be denied, that she has been shewn to be acquiescent in this murder, the Acting Session Judge taking all the facts in evidence into consideration, passes on the three prisoners one and the same sentence, leaving it to the Superior Court to discriminate between their relative degrees of guilt, if it shall see fit to do so." The Acting Session Judge then sentenced the three prisoners to transportation for life.

When the case was submitted for confirmation to the Sudder Court, the Judges present recorded the following minutes.

By A. Bell, Esq., Puisne Judge: "There can be no doubt of the guilt of the respective prisoners, and I would consequently confirm the conviction and sentence. I concur most fully in the reasoning advanced by the trying authority as regards the relative degree of guilt of the several prisoners, and I would recommend the female prisoners to Government for a mitigated punishment. Considering the extreme youth of the prisoner Chimee, the superstitious influence exercised by the crafty Bhuggut on one so totally ignorant, which not improbably produced temporary aberration of mind, increased by the bodily suffering she must have undergone in giving birth to her spurious offspring, I would not subject her to a heavier penalty than three years' imprisonment, the last month of which in each year to be solitary. In respect to the prisoner Bhewree, I consider seven years' imprisonment with one month in each year to be solitary would be sufficient. But in regard to the male prisoner, who was the cause of Chimee's disgrace and the instigator of this murder, I would allow the Law to take its course, as I consider him fully deserving of the punishment which has been awarded."

By H. Brown, Acting Puisne Judge: "I have read the proceedings in this case. The guilt of the prisoners has been fully established. The murder was deliberately committed, and the confessions of the prisoners shew the part each took in the cruel act. The age of the prisoner Chimee appears to be only fifteen or sixteen, and one of such tender

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The case of CHIMEE and others.

years must have been instigated to have committed the murder, and this has been borne out by the admission of the prisoner Jewanya, who directed her to make away with the infant, so that no traces should be discovered. The guilt of this prisoner Jewanya is in my opinion the greatest; he is stated to be a wizard, and under such profession his influence over the minds of the two female prisoners must have been powerful. The prisoner Bhewree was present and assisted her daughter to make away with the infant, the neck of which was broken by being twisted. I would confirm the sentences passed against the prisoners by the Acting Session Judge, and in consideration of his remarks on the prisoner Chimee and her age, I think some extenuation should be shown to her, as well as the prisoner Bhewree, her mother. I would therefore propose that both these prisoners be recommended for mercy to the Hon'ble the Governor in Council, and for which purpose I would lay the proceedings before Government, and recommend that Chimee be imprisoned for seven and Bhewree to ten years' imprisonment."

The Court accordingly resolved to confirm the convictions and sentences on all the prisoners, and to submit the whole of the proceedings in this case to Government, with a view to a mitigation of the sentences passed on the female prisoners Chimee and Bhewree.

On the 4th January 1845, the Judicial Secretary to Government communicated to the Court, that the Hon'ble the Governor in Council had been pleased to mitigate the sentence of transportation for life passed upon the prisoner Chimee to two years' imprisonment, but viewing the prisoner Bhewree to be equally guilty with the prisoner Jewanya, his Honor in Council was of opinion, that the sentence passed upon her should be carried into effect. Warrants were issued accordingly.

THE CASE

of

LUXMAPPA BIN APPANA.

Charge—*Murder.*

1845
7th January.

LUXMAPPA BIN APPANA'S case.

The prisoner killed with a sword a thief he found at night stealing his chillees in a field. Held by the Sudder Foujdaree Adawlut, that this was not a case of justifiable homicide, but of culpable homicide; it being proved, that the prisoner's own life was not in danger, that the deceased offered no resistance, and did not even attempt to escape, and that the prisoner might have apprehended the deceased without resorting to extreme means, which the circumstances of the case did not warrant.

This prisoner was arraigned at the bar of the Session Court of Dharwar, on the 14th day of November 1844, and was indicted for the murder of one Ningungoonda.—Plea, guilty.

It was proved, that the prisoner went on the evening of the 24th of October 1844, to watch his field of chillees, situated near the village of Nusrapoor in the Badamee Talooka of the Dharwar Zillah, and that as usual he took his sword with him; that about midnight seeing by the moonlight two thieves in his field stealing the chillees, he crept up behind one of them and inflicted with his sword a wound on the nape of the thief's neck; on seeing him fall, the prisoner ran to his village, and reported to the shetsundees on guard at the chowkee, that he had wounded a man, whom he had found stealing his chillees, but that he did not know who the man was. On this information Nugdaiknaik and four other shetsundees accompanied the prisoner to his field, where they found Ningungoonda dead, and in one of his hands a number of chillees. The wound was described as a clean sword cut, which had nearly severed the head from the body. It further appeared, that Luxmappa and the deceased were neighbours and mutual friends, and the former was spoken of as a man of quiet and inoffensive habits. There was however nothing in the evidence to justify the prisoner's violent conduct on the present occasion; it was not shown, that his own life was in danger, that the deceased was armed or offered resistance, or even that he attempted to escape, but on the contrary it appeared, that the deceased had been cut down unawares while in the act of stooping to pick the chillees, and that the prisoner might have apprehended him without resorting to such extreme measures.

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The case of LUXMAPPA BIN APPANA.

The prisoner in his confession admitted, that he had wounded the deceased as above described, but stated that he had no intention of killing him.

The Session Judge (J. W. Muspratt) was of opinion, that there was no possible doubt, that the deceased Ningungoonda had met his death by the hand of the prisoner, and that therefore it only remained for him to consider, whether the circumstances under which the fatal event had occurred, were such as to divest the act altogether of criminality, as being in defence of property that was assailable, or whether it occurred under such circumstances of extenuation as to bring it within the definition of culpable homicide, as laid down by the Regulations. It was true, the Session Judge remarked, that the deceased was stealing the prisoner's property, that the prisoner at the time did not know the deceased, and that the deceased afterwards turned out to be his intimate friend, and that it might therefore be safely inferred, that he would not knowingly have slain him. But the Session Judge also remarked, that there was no well-grounded cause for the prisoner fearing for his own safety, or that the impulse of fear in any degree impelled him to commit the act, nor was the value of the property such as to justify the extreme means he had recourse to for its preservation. The Session Judge was finally of opinion, that the circumstances of this case were not sufficiently extenuating to divest the act of that criminality which constituted murder, and therefore convicted the prisoner of that offence, and sentenced him to transportation for life, subject to the confirmation of the Superior Court.

Cl. 4, Sec. XXVI. Reg. XIV. of 1827.

By the Court of Sudder Foujdaree Adawlut, Mr. W. Simson: "The fact of the prisoner having killed the deceased is plain, and that he intended severe bodily infliction cannot be doubted, but the circumstances show provocation, and that there was no premeditated intention. I would convict the prisoner of culpable homicide, and mitigate the sentence to three years' imprisonment without labor."

Mr. H. Brown: "I have read the proceedings in this

case, and though there is much criminality in the prisoner's act, in cutting the deceased Ningungoonda down because he was robbing his field of chillees, yet there is nothing to show malice prepense, and the prisoner must have committed the deed under the impression that he was authorized to inflict the wound on the robber, who was actually stealing his property. The deceased was apparently the friend of the prisoner, and when the blow was given the prisoner repaired to the chowkee to give information of his having cut down a robber; had the robber shewed any resistance or run away, the prisoner's act might have been justifiable, but in the absence of these circumstances the prisoner must be found guilty of culpable homicide, and I would sentence him to be imprisoned for three years without labor."

1845

The case of LUXMAPPA BIN APPANA.

The prisoner was sentenced accordingly.

THE CASE

of

BAPOOREEA AND KHURJA, BHEELS.

Charge—*Gang Robbery.*

1845
18th March.

The case of BAPOOREEA BHUGWAN and another.

These prisoners were tried before the Session Judge of Surat, on the 17th day of June 1841, on two separate charges of Gang robbery.—Plea, guilty.

The prisoners in this case were charged with three Gang Robberies, the first and second committed within the territory of the Honorable East India Company, and the third within that of His Highness the Guickwar. On apprehension they were tried and convicted on the first and second charges by the Judge of Surat, and senten-

The prisoners were inhabitants of the villages of Antrolee and Khoolasar, belonging to His Highness the Guickwar, and were charged with having, in company with others, entered the Honorable the East India Company's territories, and committed, during the months of February and April 1841, two gang robberies in the villages of Timbarwa and Abla, within the Zillah of Surat, and upon conviction were sentenced by the Session Judge (G. L. Elliot) to be severally imprisoned with hard labor for the term of five years. It further appear-

1845

The case of BAPOOREEA BHUGWAN and another.

ced to five years' imprisonment, and at the expiration of that period they were ordered to be delivered over to the authorities of His Highness the Guickwar, when one of the prisoners claiming to be a British subject under Sec. V. of Reg XI. of 1827, it was held by the Sudder Foujdaree Adawlut, that the onus probandi in the case rested with the prisoner.

ing that the prisoners had also committed a gang robbery in the territories of His Highness the Guickwar, on the 13th May 1841, the Session Judge ordered, that at the expiration of the sentence of the prisoners, they should be sent to the Zillah Magistrate to be handed over for disposal to the authorities of His Highness the Guickwar.

On petition by the prisoner Bapooreea to the Judicial Commissioner for Guzerat and the Konkan, in February 1845, claiming to be a British subject, and praying that he might not be delivered over to the Guickwar's authorities, the Judicial Commissioner recommended the order of the Session Judge to that effect to be cancelled, on the grounds that there was nothing to show that the petitioner was not a resident of the Company's territory for more than a period of six months prior to his apprehension; the letter from the Sir Soobah of His Highness the Guickwar, the Judicial Commissioner remarked, did not state the date on which the alleged robbery was committed in His Highness's dominions, thereby rendering it impossible to define the Law under Sec. V. of Reg. XI. of 1827; and he further considered the surrender of persons for minor offences inexpedient, the robbery in the present case being of a very ordinary character.

By the Court of Sudder Foujdaree Adawlut. Mr. A. Bell. "From an accompaniment to the Sir Soobah's letter, it appears that the robbery * in His Highness the Guickwar's territory occurred the day before the prisoner's apprehension. This therefore is data to go upon. If therefore the prisoner can show, (for the onus rests with him,) that he had been residing within the Company's territory for the space of six months previously to his apprehension, then his surrender must be referred for the confirmation of Government, and to which effect I propose instructions be issued to the Magistrate, in reference to the Session Judge's order of the 17th June 1841. Should it, however, appear, that his assertion in regard to residence is not substantiated, I see no cause for interfering with the order passed."

* This robbery occurred on the 13th May 1841.

1845

The case of BAPOORBA BHUGWAN and another.

Mr. H. Brown: "I do not coincide with the view of the Judicial Commissioner. The proof of the prisoner's having been six months prior to his apprehension a resident in the British territory rests with the prisoner himself, and even if he did so reside, the Magistrate, by the latter part of Cl. 2, Sec. V. of Reg. XI. of 1827, should report the case to Government; but under the existing circumstances I would not interfere."

The Resolution: "The Court sees no cause for interference, considering that it rests with the prisoner to prove that he was resident in the British territories for six months previous to his apprehension, when the provisions of Cl. 2, Sec. V. of Reg. XI of 1827, will become the rule for the Magistrate's guidance*."

THE CASE

of

RAMA BIN BURMAPPA.

Charge—*Murder.*

1845
9th April.

RAMA BIN BURMAPPA's case.

This prisoner, who committed a murder in a village belonging to the Nepannee Jaghire, before it lapsed to the British Government, and who was apprehended and brought to trial after its annexation, was acquitted, on the ground of want of jurisdiction under the provisions of Art. 2, Cl. 2, Sec. III. of Reg. XI. of 1827.

This prisoner was indicted for having, during the year A. D. 1825, near Bussinhall, a village at that time belonging to the Nepannee Jaghire, murdered one Suntumma by cutting him down with a sword. Plea, guilty.

The prisoner stated in his confession, which he admitted before the Session Court, that in the year 1825, his master Timappa sent him to one Suntumma's field to gather some bullal, a kind of vegetable; that as the prisoner was plucking the bullal, Suntumma, the deceased, came up in a rage, abused him, and threw a spear at him, but that missing his aim, Suntumma threatened to kill him, so that the prisoner, fearing for his life, drew his sword, and struck the deceased twice; the first

* Vide Interpretations on Sections I. and IV. Reg. XI. of 1827, dated 27th of January 1829, and 31st December 1830.

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The case of RAMA BIN BURMAPPA.

blow took off the deceased's left arm, and the second killed him; that the prisoner then fled to His Highness the Nizam's Territory, and that in December 1844 being apprehended by the Mahalkurree of Gulgulla, he made the above confession. The prisoner urged in his defence, that he had been once punished for this offence by being heavily fined by the former Government. But of this fact there was no proof. It further appeared, that the villages composing the Jaghire of the late chief of Nepannee had lapsed during the year 1842 to the British Government, and that the Beelgee mahal, in which was included the village of Bussinhall, where the murder was committed, had been annexed to the Belgaum Collectorate. Under these circumstances, the Magistrate of Belgaum entertained doubts as to his jurisdiction over the prisoner, and therefore referred the question to the Sudder Foujdaree Adawlut, when instructions were issued to the effect, that the Court saw no objection to the prisoner's being tried by the General Regulations, the rights of the chief of Nepannee having been transferred to the British Government, and it being desirable that such offenders as the prisoner should not escape punishment.

In accordance with these instructions the prisoner was brought to trial before the Session Judge of Dharwar (J. W. Muspratt), and being convicted was sentenced to be transported for life under Cl. 4, Sec. XXVI. of Reg. XIV. of 1827.

On the case coming for confirmation before the Court of Sudder Foujdaree Adawlut, (present, A. Bell and B. Hutt,) the following minutes were recorded:—

By Mr. Bell: "The prisoner in this case stands convicted of murder, under circumstances of extenuation, in having in the year 1825, within the limits of the village of Bussinhall, then forming a part of the Nepannee Territory, deprived one Suntumma of life, by cutting him down with a sword. The evidence rests entirely on the prisoner's confession, and his recorded plea of guilty; but the former contains exculpatory circumstances, which, taken as a whole, entirely divests it of

1845

The case of RAMA BIN BURMAPPA.

the capital offence, and indeed renders it very questionable whether the act might not almost be considered as justifiable. Under these circumstances the punishment ought in my opinion to be merely nominal. Before deciding on this point, however, it is desirable that the prisoner's liability to the Court's jurisdiction should in the first instance be declared. At the time the offence occurred the prisoner was a subject of the Nepannee Jaghire, not then amenable to the Bombay Regulations, but by Act VI. of 1842 that Jaghire has been annexed to the British Territory. Before committing this prisoner for trial, the question of jurisdiction was referred by the Magistrate, and instructions were issued, that the Court saw no objection to the prisoner being brought to trial under the General Regulations; a similar conclusion having been come to on a reference from the Magistrate of Belgaum, on the 3rd of July 1839, as to the course to be adopted in regard to an offence committed by a subject previous to the Chinchinee Jaghire coming under the Regulations, when it was declared, that as the Regulations are now in force, all trials should be conducted under their provisions; this however is directly opposed to Article 2, of Cl. 2, Sec. III. Reg. XI. of 1827, which provides, that such subjects shall only be criminally responsible to the Law for acts done by them subsequently to the period of conquest or cession. On a re-consideration of this subject, which is one of importance, and on which hitherto only an extrajudicial opinion has been given, I am induced to question the legality of the conviction, notwithstanding such jurisdiction has been assumed. The proceedings must then be quashed. That offenders should escape justice for offences committed by them, antecedent to the above Law coming into operation, is to my mind obviously objectionable; and I am inclined to think the Law of Nations would sanction the placing on his trial a prisoner, under the circumstances above adverted to, if so specially directed by the Government to whom all right formerly vested in the Nepannee State has been transferred."

By Mr. Hutt: "This would be a difficult case to decide,

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The case of RAMA BIN BURMAPPA.

had the Court jurisdiction. Because under Cl. 2, Sec. XXXVIII. Reg. XIII. of 1827, a confession must be taken as a whole, and it is not by any means clear that the killing was not an act of self-defence; for though truly the prisoner was a trespasser, and killed another while in the commission of an unlawful act, yet the resentment of Suntumma exceeded due bounds. It is however not necessary to enter on the consideration of this point, as it is quite clear, under Article 2, of Cl. 2, Sec. III. Reg. XI. of 1827, that the accused is not amenable to the ordinary Courts for a criminal offence committed before either he became a subject of the British Government, or the place where the deed was perpetrated came under British Law."

The Court accordingly resolved to acquit the prisoner and order his discharge.

THE CASE

of

PUDDEE.

Charge—*Instigating Murder.*

1845
24th April.

PUDDEE'S case.

The instigator of a murder punishable, although no conviction has been recorded against the principal.

This prisoner was tried before the Session Judge of Ahmednuggur (W. J. Hunter) on the 22d of March 1845. Plea, not guilty.

It was proved that the prisoner had quarrelled with her husband the prosecutor, and that in consequence she had instigated one Dhakoo, her paramour, to murder her husband; that Dhakoo about midnight on the 1st of September 1844, entered the prosecutor's house, and with a koita or billhook inflicted two wounds on the prosecutor's hand and face, while he was lying asleep on his cot. One of these wounds, extending from the corner of the mouth to the back of the ear, was so severe, that the prosecutor's life was for

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The case of PUDDEE.

some time despaired of. On the morning after the attack, the prisoner and her paramour Dhakoo absconded; but upon being afterwards apprehended, both confessed before the Mamlutdar. Dhakoo subsequently effected his escape from custody, but the prisoner being committed to trial on a charge of instigating Murder, was convicted by the Session Judge of that offence, and sentenced to transportation for life, which sentence received the final confirmation of the Court of Sudder Foujdaree Adawlut (present, Messrs. Bell and Hutt, Puisne Judges).

THE CASE

of

TOTEYA BIN RACHYA.

1845
9th June.

TOTEYA BIN RACHYA'S case.

The prisoner in this case was acquitted of concealment of murder, on the grounds, that the body of the deceased had never been found, and that there was no proof of a murder having been committed, beyond the admission of the prisoner, that one of the principals told him that such was the fact.

Although in certain cases convictions may be had against the concealer and aider in murder, when no conviction has been recorded against the principal, yet as long as a hope can be en-

Charge—*Concealment of Murder before and after the fact.*

This prisoner was arraigned on the above charge before the Session Judge of Dharwar, on the 5th of March 1845. Plea, guilty.

The only evidence for the prosecution was the prisoner's confession made before the Police Amildar of Roan, on the 12th of September 1844, and which on being read over to him, he confirmed before the Session Court. The prisoner in this confession stated, that during the month of August 1844, one Bheemrow, a Shetsundee, came and asked the prisoner to give him notice when Sungum Bussya next visited his house, as Sungum Bussya had burnt his stack of grain, and he intended to kill him; this the prisoner agreed to do, and accordingly when Sungum Bussya, in company with one Timmah, came to his house on the 28th of August following, the prisoner sent Bheemrow notice that he would bring Sungum

1845

The case of TOTEYA BIN RACHYA.

Bussya to a particular nullah near the village of Kodganoor, on the morrow; that on Thursday, the 29th of August, the prisoner took Sungum Bussya and Timmah, under the pretext of tending some cattle, to the nullah above mentioned, where he saw Bheemrow, his brother Yella, and one Kulgoodee, concealed; that the prisoner then left Sungum Bussya and Timmah in charge of the cattle, and himself went to cut grass in the jungle close by; that while he was so employed Timmah came running to him, and said, three men were beating Sungum Bussya, and begged of him to render assistance; that the prisoner replied, he must first cut the grass; that after the lapse of about an hour the prisoner went to the nullah, but could not find Sungum Bussya; he then enjoined Timmah not to mention what he had seen, and collecting his cattle returned home. Five days afterwards the prisoner met Yella, and asked him what he and his brother had done to Sungum Bussya, when Yella said they had killed him. The body of Sungum Bussya was never found, nor was there any evidence corroborative of the prisoner's confession to prove that a murder had been committed, further than that Sungum Bussya had not been seen or heard of since the 29th of August 1844. It also appeared, that Bheemrow, Yella, and Kulgoodee were residents of His Highness the Nizam's dominions, and had not been apprehended, and that Timmah was nowhere to be found.

tertained of apprehending the principal, and the Law allows it, it is preferable to postpone the arraignment of the concealer or aider.

The Session Judge (J. W. Muspratt) convicted the prisoner upon his own confession, and sentenced him to transportation for life.

Cl. 5, Sec. I. and Cl. 4, Sec. XXVI. of Reg. XIV. of 1827.

On the case coming for confirmation before the Court of Sudder Foujdaree Adawlut, the Judges present recorded the following minutes.

By Mr. A. Bell, Puisne Judge:—"The prisoner stands convicted on a plea of guilty on his own confession, with concealment of the Murder of one Sungum Bussya, both before and after the fact. From the prisoner's admission he is equally guilty of aiding and assisting in the Murder of the deceased, he having invited him to his house, and from thence

brought him to the spot where it is alleged his life was taken. Beyond the prisoner's confession, however, there is no proof whatever that death has ensued, the corpse never having been found, under which circumstance an acquittal must be recorded."

Mr. Hutt considered that the prisoner's confession, admitted before the Session Judge, was sufficient for conviction, and that therefore the sentence should be confirmed.

By Mr. J. Pyne:—"This is a case which eminently called for postponement to the utmost period the Law allows, in the hope that the principals might have been brought to trial. The evidence against the prisoner consists in his own confession, in which he states that one of the prisoners told him five days subsequently to the prisoner's having conducted the deceased to his field, that he had murdered him. There is no other proof whatever of the murder having taken place. The body was not found nor any traces of a murder having been perpetrated. Such evidence would not convict another person of concealment of murder, had it arrived through another channel, and I do not perceive how, on the confession of the prisoner alone, it can be altered or have more weight. How does the prisoner know that Yella, the brother of Bheemrow, told him the truth? Suppose it were an untruth. I would acquit and discharge the prisoner, on the ground of want of proof, and point out to the Session Judge, that as long as a hope can be entertained of apprehending the principals in murder, and the Law allows it, that it is preferable to postpone arraigning the concealer or aider."

The Court finally resolved to acquit * the prisoner, and

* Sir Matthew Hale in treating of the caution that is necessary in admitting presumptive evidence, lays down two very prudent rules. He says,

"I would never convict any person of murder or manslaughter, unless the fact was proved to be done, or at least the body be found dead.

"I would never convict any person for stealing the goods of a person unknown, merely because he could not give an account how he came by them, unless there was due proof made that a felony was committed of these goods."

Sir Matthew Hale then cites the two following cases as containing his reasons for coming to the above conclusions.

1. "An uncle, who had the bringing up of his niece, to whom he was heir

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remarked to the Session Judge, that as long as a hope can be entertained of apprehending the principal in murder, and the Law allows it, it is preferable to postpone the arraignment of the concealer or aider.

at law, correcting her for some offence, she was heard to say, '*Good uncle, do not kill me,*' after which time the child could not be found; whereupon the uncle was committed upon suspicion of murder, and admonished by the Justices of Assize to find out the child by the next Assizes, against which time he could not find her, but brought another child as like her in person and years as he could find, and apparelled her like the true child, but on examination, she was found not to be the true child. Upon these presumptions he was found guilty, and executed; but the truth was, the child being beaten ran away, and was received by a stranger, and afterwards, when she came of age to have her land, came and demanded it, and was directly proved to be the true child."

2. "If a horse be stolen from A. and the same day B. be found upon him, it is a strong presumption that B. stole him; yet I do remember, before a very learned Judge, in such an instance B. was condemned and executed at Oxford Assizes, and yet within two Assizes after, C. being apprehended for another robbery, and convicted, upon his judgment and execution confessed he was the man that stole the horse, and being closely pursued, desired B, a stranger, to walk his horse for him, while he turned aside upon a necessary occasion, and escaped, and B. was apprehended with the horse, and died innocently."

Tutius semper est errare in acquittando quam in puniendo, ex parte misericordiæ, quam ex parte justitiæ.

THE CASE

of

POONJEA	No. 1.	GUNGIA	No. 5.
TOOKIO	No. 2.	SUTWA	No. 6.
DHAKTA TOOKIA	No. 3.	HUNMUNTA and	No. 7.
RAMA	No. 4.	RODIA	No. 8.

1845
9th September

The case of POONJEA WULLUD LALLOO, and others.

A gang of men armed with clubs set out

Charge—*Gang-Robbery by night, attended with Murder.*

These prisoners were arraigned before W. J. Hunter, Esquire, at the half yearly Circuit Sessions held on the 21st of July 1845, at Dhoolia, for the province of Khandeish.—Plea, guilty.

1845

The case of POONJEA WULLUD LALLOO, and others.

at night to rob a house, and in the prosecution thereof, they murdered a Suwar in order to prevent alarm being given. There was no previous intention to take life, plunder being the evident object of the Gang. Held by the Sudder Foujdaree Adawlut, that they were all guilty of murder; sentence of death passed upon the leader of the Gang, and of transportation for life on the rest.

Confessions of prisoners to be taken down in their own words, and not to be dictated.

The prisoners were all of the Kykaree or Gypsy caste, and subjects of His Highness the Nizam, whose territory they had left, and were travelling through the province of Khandeish, earning a precarious livelihood by making and selling baskets. On the 6th of January 1845, they were encamped near Toondapoor, when the prisoner Poonjea, No. 1, in consultation with the other seven, planned the robbery of a house in the town, where Myhee his wife had seen several females wearing ornaments and jewelry.—On the night of Saturday, the 11th of January 1845, the eight prisoners proceeded in a gang, armed with sticks and clubs, to attack the house, which belonged to one Purushram, a Suwar. The prosecutrix in her deposition stated, that two of the robbers first entered the house about midnight, that her husband jumped up, seized them, and managed to hold them down, whereupon they called out for assistance, when more robbers rushed in with torches and clubs, and struck her husband several severe blows on the head; that he then tried to escape, but was knocked down and killed by one of the robbers, who stood outside the house; that the robbers then beat her, and robbed her and her child of all their ornaments, and the house of sundry articles of property, of the value of Rupees 422-9-3. On the following day the robbers were traced to the village of Tuklee, and a part of the stolen property being discovered in the prisoners' possession, they one and all confessed to having committed the robbery and killed Purushram, Suwar. Before the Mamlutdar of Jamnair they again made full and detailed confessions of their guilt, and these confessions they confirmed before the Magistrate and the Session Court, urging that they were impelled by poverty and want to commit the crime.

The Session Judge (W. J. Hunter) selected the prisoners Poonjea No. 1, Gungia No. 5, and Sutwa No. 6, as those most actively engaged in the murder, and sentenced them to suffer the extreme penalty of death, and the remainder to be transported for life, subject to the confirmation of the Superior Court.

By the Court of Sudder Foujdaree Adawlut. Mr. B.

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Hutt:—"The prisoners pleaded guilty to the charge, and having heard the evidence read over, admitted the truth of their own confessions recorded before the Police authorities; their conviction therefore is correct. It does not appear that the prisoners had any previous design to take the life of the Suwar, their object evidently was plunder; but in the commission of the robbery they were induced, in order to prevent the alarm being given, to inflict such merciless blows on the unfortunate man, as caused his death. The Session Judge has selected three prisoners, on whom he has passed capital sentence, viz. Poonjea, Gungia, and Sutwa. In the trial of the case, he would see more clearly into the minute particulars than we can, or I should rather have considered the younger Tookia to have merited such a punishment, more than the two last, for he certainly appears to have regarded himself as the one who struck the Suwar to the ground, and to have been so regarded by the others; as it is, I should be disposed, considering that the murder was unpremeditated, to confirm the capital sentence on Poonjea, who was evidently the leader and original planner of the robbery, and sentence all the others to transportation for life. I most fully concur in the remarks made by Mr. LeGeyt on the character of the confessions of the prisoners."

Mr. P. W. LeGeyt:—"The confessions of the eight prisoners are quite conclusive of their guilt, and the conviction of each for murder is correct. I observe a striking similarity in the words at the commencement of each confession, which it is almost impossible to believe could have been made use of by each individual prisoner. In case of a subsequent denial or a less free and detailed confession than each of these is, this circumstance would have shaken my confidence in them. It cannot be too strongly impressed on Police officers taking statements from prisoners, that the very words, and those only, which the prisoners utter, should be written down. Any matter which from its tenor or style appears to have been dictated to the prisoner, weakens the value of the statement. After giving the case my best consideration, I am unable to

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discover that difference in the shades of the guilt of each prisoner, which would warrant any variation in the punishment. The murder was undoubtedly a cruel one, and legally each man has forfeited his life to the laws; but taking into consideration the very equal measure of guilt the evidence fixes on each, and also that, though reckless of spilling blood, there was no previous intention of taking life, I am of opinion, that the capital sentence passed upon Poonjea, Gungia, and Sutwa, need not be carried into execution. I would sentence all the prisoners to be transported."

The Honorable the Chief Judge (L. R. Reid): "The lives of all these men are justly forfeited. This is a case in which the extreme sentence of law should, in my opinion, be carried into execution. I therefore concur with Mr. Hutt, in confirming the capital sentence on Poonjea, who appears to have planned the robbery, although in the execution of it he may have done no more than his accomplices."

The Resolution of the Court therefore confirmed the convictions and sentences passed on the prisoners Nos. 1, 2, 3, 4, 7, and 8, and mitigated the sentence of death passed on Nos. 5 and 6 to transportation for life.

THE CASE

of

RAMAJEE BIN KANAPPA.

Charge—*Embezzlement.*

1845
22nd September

The case of RAMAJEE BIN KANAPPA.

Assistant Magistrates, upon whom the full penal powers of a Magistrate have

In this case, the prisoner Ramajee was indicted before the 1st Assistant Magistrate of Belgaum, on the 26th June 1845, for Embezzlement, in that, being a Government Revenue Officer in charge of the stamps of the Hoongoond Cutcherry from December 1843 to the end of August 1844, and being entrust-

1845

The case of RAMAJEE BIN KANAPPA.

been conferred, under Act XIV. of 1835, are still under the control of the Zillah Magistrate, who possesses the power of reviewing the decisions, and mitigating or annulling the sentences, of all his Assistants.

Regulations XVI. Section XI. Clause 3d of 1827.

ed with the vending of such stamps, he had, during the above period, used for his own advantage the proceeds of the sale of one such stamp, of the value of Rupees sixteen.—Plea, not guilty.

The 1st Assistant Magistrate convicted the prisoner, and sentenced him to be imprisoned for six months, and to pay a fine of Rupees 50, commutable into imprisonment for a further period of six months. The Zillah Magistrate (H. W. Reeves) not concurring in this conviction, submitted the case to the Sudder Foujdaree Adawlut with the following remarks.

"It is only said, that on an examination of the stamps, a certain paper having been found wanting, the prisoner forthwith paid the value of it. But surely it does not follow, that merely because a valuable thing is missing, it has been embezzled, or that because restitution is immediately made, it involves a confession of guilt. The fair and charitable view, in default of stronger evidence against him, (and the prisoner is entitled to such a view of the case,) is, that the paper was lost. I am therefore of opinion, that the charge is inapplicable. I am also of opinion, that if the charge had been fully borne out by the evidence, the sentence recorded is unnecessarily severe. But as I entertain doubts of the powers of a Magistrate to interfere with sentences passed by his Assistants* upon whom full penal powers have been conferred under Act XIV. of 1835, I am induced to request the instructions of the Judges of the Sudder Foujdaree Adawlut."

Upon this question the Judges recorded their opinions as follows:—

Mr. Hutt: "I would inform the Zillah Magistrate, that if his Assistants err, he should correct their mistakes; that the grant of full penal powers to an Assistant, is designed to extend his usefulness, and not to remove him from the wholesome check and control of his superior, the Zillah Magistrate, whom he was appointed to assist in his arduous and important duties."

* Mr. Hadow, the 1st Assistant Magistrate, was vested with full penal powers under Act XIV. of 1835.

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Mr. LeGeyt: "I see nothing in the granting by Government of the full powers of a Magistrate to an Assistant Magistrate, which takes away from the Magistrate of the Zillah the control over all the Magisterial authorities in the Zillah; and therefore, I think, he still possesses, and should exercise, the power of reviewing the decisions, and mitigating or annulling the sentences, of his Assistants, whether they be vested with the full penal powers of Magistrates or not."

Mr. Brown, concurring with Mr. LeGeyt, the Court unanimously passed the following resolution: "The Court, on full consideration of the question of the power of a Magistrate to interfere with sentences passed by his Assistants, who may have been vested with full penal powers, under Act XIV. of 1835, resolves, that the authority of the Zillah Magistrate to reduce or amend any decisions of an Assistant Magistrate within his jurisdiction, is complete, whether that officer has had full penal powers conferred on him or not; under this view the Magistrate of Belgaum is to be directed to review the case he has referred, and report the result."

The original sentence was finally annulled by the Zillah Magistrate, and the prisoner discharged.

THE CASE

of

NIMBIA WULLUD ROODRANACK.

1845
27th October.

NIMBIA WULLUD ROODRANACK'S case.

Charge—*Receiving stolen property, knowing it to be stolen.*

The trial of this prisoner was held before the Session Judge of Sholapoor, on the 30th day of August 1845.—Plea, not guilty.

The prisoner, a subject of His Highness the Rajah of Sattara

The prosecutor Tummunna deposed, that he was a trader

1845

NIMBIA WULLUD ROODRAJACK'S case.

was charged before the Session Judge of Sholapoor, with receiving stolen goods at Akulkhote, a town belonging to His Highness, the goods having been stolen within the Hon'ble East India Company's territories. Held by the Sudder Foujdaree Adawlut, that the prisoner under these circumstances was exempt from the Court's jurisdiction, and must, therefore be acquitted.

residing at Akulkhote, a town tributary to His Highness the Rajah of Sattara, and that he despatched in December 1844, a quantity of cumblees of the value of Rs. 283-5-0 to Sholapoor for sale, in charge of one Goorsatappa, whom he hired for the purpose of taking care of them: that Goorsatappa returned to Akulkhote, and told prosecutor, that the cumblees had been stolen by some thieves, on the night of the 5th of December 1844, at the village of Chinchole, within the Hon'ble East India Company's territories; that some time afterwards the prosecutor received information that his cumblees had been sold to the prisoner, who is also a resident of Akulkhote, and on having his premises searched, the prosecutor found fifty-eight cumblees, which by the peculiarity of the border, the prosecutor fully identified as his property.

The prisoner in his defence gave a very unsatisfactory account of how he came by the cumblees.

The Session Judge (W. Birdwood) convicted the prisoner, and sentenced him to eighteen months' imprisonment with labor. Cl. 1, Sec. XLI. Reg. XIV. of 1827.

On the case being laid by petition before the Sudder Foujdaree Adawlut, the Court (present B. Hutt and H. Brown) annulled the proceedings of the Session Judge, on the grounds, that the offence of receiving the stolen goods having been committed in a foreign country, by the subject of a foreign power, the Court had no jurisdiction, and therefore left the Magistrate to act agreeably to Cl. 1, Sec. V. of Reg. XI. of 1827.

THE CASE

of

RAMBA, SUTTOO, BOOSYA, AND BALLOO.

Charge—*Escape from Custody.*

1845
12th November

The case of RAMBA and others.

The prisoners in this case having been liberated from legal custody by some rebels, who attacked the town of Chickodee, made their escape. On being again apprehended, they were tried for escaping from custody, convicted, and sentenced by the Session Judge to one year's imprisonment without labor, which sentence was, in consideration of the circumstances of the case, mitigated by the Sudder Foujdaree Adawlut to one month's imprisonment.

The prisoners were tried for this offence, on the 11th of March 1845, before the Session Judge of Dharwar.

The facts of the case, as proved by the confessions of the prisoners, were these:—The prisoners were in legal custody in the Mamlutdar's Chowkee at the town of Chickodee, within the Dharwar Zillah, awaiting their trial on a charge of assault, when a body of rebels, who were in open rebellion against the Rajah of Kolapoor and his allies, the British Government, on the 9th of October 1844, attacked the district town of Chickodee, and among other overt acts of treason, broke open the Mamlutdar's Chowkee and released the persons therein confined, to the number of sixty-five, among whom were the four prisoners. It did not appear in evidence that the prisoners on being released aggravated their offence by joining the rebels in plundering the town of Chickodee, but merely that they made their escape.

The Session Judge (J. W. Muspratt) convicted the prisoners on their own confessions, and sentenced them severally to be imprisoned for the space of one year without labor. Sect: II. Reg. V. of 1831.

The case, on petition by the prisoners, was laid before the Court of Sudder Foujdaree Adawlut, when the Judges present recorded the following minutes:—

Mr. B. Hutt:—"The only evidence against the prisoners is their previously recorded confessions, in which they state they were liberated by the rebels who came to the town of Chickodee, and after having released them from their fetters, plundered them of what they had. There is no doubt that persons placed in custody by proper authority are bound to submit until discharged by due course of Law; but persons

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The case of RAMBA and others.

liberated by whatever authority may happen to be paramount at the time, cannot be said to make an escape. I would acquit the prisoners and order their discharge."

Mr. H. Brown:—"The prisoners state, that the rebels who attacked Chickodee released them from confinement. This in some measure modifies their offence. Had they subsequently surrendered themselves the charge would have fallen to the ground. I am of opinion, the sentence passed by the Session Judge is very severe, considering that the offence for which they were apprehended was an assault, which may have merited a trifling imprisonment. Under this circumstance I would not interfere with the conviction, but I would direct their release from jail, unless they have been sentenced for the assault; in this case, their sentences for that offence should commence from the date of the Court's precept."

The case was then referred to a third Judge, when Mr. Pyne recorded the following minute:—

"Prisoners under legal custody are clearly guilty of an offence if they escape. The circumstances under which the escape takes place are so various, as to alone govern the punishment. In the present instance, I would award one month's ordinary imprisonment."

The Court finally resolved to mitigate the sentence to one month's imprisonment in the case of each prisoner, and they were accordingly ordered to be forthwith discharged.

THE CASE

of

PUDDOO BIN BAPPOO, NEERMUL.

Charge—*Gang Robbery attended with murder, and wilful destruction of property by fire.*

1845
17th November

PUDDOO BIN BAPPOOJEE NEERMUL'S case.

The prisoner convicted of the murder of one Amrutrow Hurree Bhut, the Jemadar of the Ghaut Police, and sentenced to be executed, for the sake of example, at the place where the murder was committed.

The mode of procedure to be adopted in rendering the deposition of a defunct witness legal evidence shewn.

The trial of this offender was held before the Session Court of the Konkun, on the 11th day of October 1845, when the prisoner was placed at the bar, charged with murdering one Amrutrow Hurree Bhutt, the Jemadar of the Ghaut Police; with wilfully destroying by fire the Lines of the Ghaut Police; and with plundering in concert with his gang, the arms, accoutrements, and property belonging to a party of the said Ghaut Police; such crimes having been perpetrated between the hours of 6 and 7 A. M. on the 2d of January 1845, at the village of Dholkhamb, within the Tannah division of the Konkun Zillah. The prisoner pleaded, not guilty.

It appeared from the committing Magistrate's proceedings, that two very important witnesses in this case, after giving their depositions, had died. The Session Judge, therefore, took evidence to prove this fact, and then proceeded to read and record their depositions, calling the attesting witnesses to prove their authenticity, and thus rendering them legal and valid evidence. From these depositions it was established, that the prisoner Puddoo, at the head of a numerous gang of from 25 to 30 armed persons, with the double purpose of revenge and plunder, surprised the Ghaut Police Station at the village of Dholkhamb, early in the morning of 2d January 1845, when most of the Police Sepoys were bathing, and no one was on guard over the guard-room. The robbers availing themselves of this opportunity, got possession of all the arms and accoutrements, and then set fire to the Lines. Amrutrow, the Jemadar of the Detachment, finding himself unsupported, endeavoured to escape, but was seized by the prisoner, and on joining his hands in supplication, the prisoner, Puddoo, cut

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PUDDOO BIN BAPPOOJEE NEERMUL'S CASE.

them both off with his sword, exclaiming, "Are not these the very hands that beat me with a shoe." The prisoner, with some of the robbers, then dragged the Jemadar into a verandah, and there deliberately cut his throat, and in this state he was found quite dead, after the departure of the gang. Two of the Ghaut Police Sepoys were wounded, the whole of the Lines burnt down, including the deceased's house, and much property plundered. On the 29th May 1845, Junordun Keshow, the Police Amildar of Kannowlee, upon information received, proceeded with some sepoys to scour the jungles near Mahl, where they succeeded in apprehending the prisoner and several of his accomplices (who were discharged by the Magisterial authorities in the absence of proof). On the prisoner, Puddoo, being told that he was apprehended for the murder of Amrutrow, he replied, "Yes, I have killed him, and have done a good deed." Some property consisting of arms, accoutrements, a red bundee, &c. were also subsequently found, and identified by several witnesses, as being a part of the property stolen at Dholkhamb. The red bundee in particular was very satisfactorily traced to the prisoner by the witness Ambee. This witness deposed, that about fifteen days before the prisoner's apprehension, she was seized by him near her village, and carried off into the jungles, that he usually wore a red bundee, and that shown to her in Court was the very same; and that deponent was forcibly detained by the prisoner until his apprehension, when she was released by the officers of justice.

The prisoner in his defence denied the charge, and accused Amrutrow Hurree Bhutt of various acts of extortion and cruelty in his official capacity, and with apprehending him on one occasion on a charge of Gang Robbery, when he beat him with a shoe, an admission which afforded a corroboration of the account given of the mutilation of the deceased, in as much as it explained the expression attributed to the prisoner, viz. "Are not these the very hands that beat me with a shoe."

The Acting Session Judge (G. L. Farrant) recorded his

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PUDDOO BIN BAPPOOJEE NEERMUL'S case.

finding in the following terms : "The Acting Session Judge having weighed all the circumstances of the case, and allowed the prisoner the benefit of every possible doubt, arising from the nature of the evidence, can come to no other conclusion, than that the charge as set forth in the arraignment, is in each and every instance established against him. The two depositions of the eye-witnesses to the fact, in themselves legally valid, bearing the stamp of truth on the very face of them, agreeing with each other, and sustained by the corroborative testimony adduced, as recorded on this trial, to the prisoner's presence at the scene of action at the time of the murder and outrages perpetrated, to his wearing an article of dress carried off among the plunder, which has been clearly identified, and to his acknowledgement of his crime, when apprehended, deriving additional confirmation from the admissions in his own statement, afford the most convincing possible proof of his guilt." The Acting Session Judge then passed sentence of death on the prisoner, subject to the final orders of the Superior Court.

Regulation XIII. Sec. XXXIV. Clause 7 of 1827.

Regulation XIV. of 1827.
Sec. XXVI. Clause 4.
Sec. XLII. do. 1.
Sec XXXVII. do. 1.

The Court (J. Pyne, B. Hutt, and H. Brown, Puisne Judges) fully concurred in the conviction and sentence of the Acting Session Judge, and therefore confirmed the same. And in reference to a special recommendation of Captain Morris, the Commandant of the Khandeish Bheel Corps, the Court decided, that it was advisable, for the sake of example to the predatory tribes, who had so long been disturbing the peace of the Konkun, to direct that the prisoner be taken to the village of Dholkhamb, the scene of the atrocious murder, and there be executed.

THE CASE

of

MOOBARUCK WULLUD OOMER SEEDEE, and two others.

Charge—*Murder.*

1845.
9th December.

The case of MOOBARUCK WULLUDOOMER SEEDEE, and two others.

In this case, two accessories to murder, in their confessions, which were the only evidence against them, admitted their guilty knowledge before, as well as after the fact, but urged, that they were deterred from disclosing that knowledge by fear of personal violence from the principal.

Held by the Sudder Foujdaree Adawlut, that this circumstance did qualify their confessions, and therefore must be admitted as an extenuation of their guilt, the Law requiring confessions to be taken strictly as a whole. Mitigated Sentences were accordingly passed.

The prisoner Moobaruck was indicted for the wilful murder of one Petta Purdéshee, during the Hindoo month of Poosh 1766, (corresponding with part of December 1844, and part of January 1845,) and the prisoners Sona and Ghalah bin Bhunga, with concealment before and after the fact. The trial was held on the 16th day of October 1845, before the Session Judge of the Konkun, when all the prisoners pleaded—not guilty.

It appeared from the proceedings on this trial, that the prisoner Moobaruck had engaged several persons, among whom were the deceased, Petta, the prisoner Sona, his wife, and the prisoner Ghalah, to cut grass in the jungle near the village of Goregaum, in the island of Salsette, where they had erected huts, and were living under the control of Moobaruck, the muccadum of the party. During their residence there, Moobaruck began to intrigue with Sona, the wife of the deceased, and in order to gain undisputed possession of her person, laid a most deliberate plan to murder her husband. The prisoners, Sona and Ghalah, were proved to have been fully aware of this intention, and Sona even to have agreed, on the night on which the murder was to be prepetrated, to absent herself from her husband's hut, and sleep at that of a neighbour, which she did, although urgently solicited by her husband to return home. Mooroo deposed, that about 9 o'clock on the night of the murder, he was sitting near the door of the deceased's hut, that he saw the prisoner Moobaruck by the moonlight enter the deceased's hut and seize him by the testicles, which he wrenched in the most violent manner, and then ran back to his own hut, that witness immediately after heard groans proceeding from the hut of Petta Purdéshee,

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The case of MOOBARUCK WULLUD OGMER SEEDEE, and two others.

and on his repairing thither with several others, they found the deceased lying on the ground, groaning in the agonies of death; he was quite speechless, and expired shortly afterwards. This witness further deposed, that Moobaruck, before day-light the next morning, ordered the body of the deceased to be buried, which was accordingly done in the presence of many of the party. Moobaruck then enjoined them with threats not to disclose how the deceased had really come by his death, but to give out, that he had died of a snake bite. Mooroo appeared to be the only person who actually saw the deed committed, but several witnesses gave evidence confirming the other particulars of the case, and they all agreed, that the deceased was a man in rude health, that he was suffering from no disease, that after the violence described, his testicles were swollen to the size of a cocoanut, and that after the murder, Moobaruck took Sona, the wife of Petta the deceased, as his concubine, and lived with her until a report of the murder was noised abroad, when he absconded, but was subsequently apprehended. Rajea, another witness for the prosecution, stated, that he took the Jury, which had been empannelled for the purpose of holding an inquest on the body of the deceased, into the jungles near Goregaum, and pointed out to them a spot covered with brambles and stones, as being the place where he had seen the remains of Petta Purdéshee buried by the orders of Moobaruck, and that accordingly on digging, the skeleton of a man was found there. The Jury confirmed the above statement, and from the enquiry they made, were unanimously of opinion, that the deceased had met his death by violence.

The prisoner Moobaruck on being called on for his defence, admitted that the deceased was murdered, but laid the crime to the prisoner Sona. He also acknowledged that he agreed to conceal the death, spread abroad a false account of its cause, and took the prisoner as his concubine immediately after Petta's demise. The prisoners Sona and Ghalah in their statements allowed their guilty participation both before and after the fact, in their avowed knowledge of the intent and

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subsequent concealment of the act, but urged in extenuation their fear of violence from Moobaruck.

The Acting Session Judge (G. L. Farrant) considered the case perfectly conclusive against all the prisoners; for although the disinterred remains were not identified as those of the deceased by personal examination, yet he was of opinion, that all possible doubt of the fact was removed by the admission of the prisoner Moobaruck, in his own statement of deceased's death (admitted also by the other prisoners), of his being one of the party, who buried the said deceased, and by the corroborative evidence of the remains being found on the very spot pointed out as the place of burial. Again the Acting Session Judge stated, that it was shewn in evidence, that criminal connexion previously existed between Moobaruck and the prisoner Sona; that he had been heard to threaten the life of deceased; that he was seen by several individuals to enter the hut of deceased, and that a short time after his leaving it, the deceased was found shockingly injured, and in the agonies of death; one of these persons deposing to his being an eye-witness to the revolting violence by which he accomplished his purpose; that he caused the corpse to be interred in an unusual manner, and with unusual haste, gave no information, threatened death to any one who should disclose the truth, and having thus removed the obstacle in his way, he took the wife of the murdered man as his concubine, trusting to escape with impunity through his position and influence over those who derived their livelihood from him, and finally absconded, which circumstances, when taken in connexion with his own admissions, afforded, in the opinion of the Acting Session Judge, incontestible proof of his guilt to the full extent charged;—that he was aided in the crime by the prisoners Sona and Ghalah, the Acting Session Judge considered, was unquestionable; the former of whom, he inferred from the evidence, participated even to a greater degree than that imputed to her, and not only acquiesced by silence, but took a more active part, while the latter, as the murderer's pander, derived profit from the connexion of the parties, which suf-

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ficiently explains his motive for secrecy, both before and after the murder. The Acting Session Judge then convicted the prisoners of the offences respectively laid to their charge, and sentenced the prisoner Moobaruck to suffer death, and the prisoners Sona and Ghalah to be severally transported for the terms of their natural lives, subject to the confirmation of the Superior Court.

Reg. XIV. Sec. 26, Cl. 1, of 1827; Sec. 1. Cl. 5, of 1847.

The Court of Sudder Foujdaree Adawlut. Minute by Mr. Pyne:—"The prisoner Moobaruck is charged with murder, found guilty, and sentenced to be hanged. I would confirm the conviction and sentence.

"The prisoners Sona and Ghalah are charged with concealment before and after the fact, found guilty, and sentenced to transportation.

"Two of the witnesses depose in a general way that the prisoner Sona, wife of the deceased, had criminal intercourse with the prisoner Moobaruck previous to her husband's murder, and this circumstance deposed to by the witnesses generally, is in some degree corroborated by her own admission, that she went to reside with the prisoner Moobaruck as his concubine a few days subsequent to her husband's death. The proof of her having been acquainted with the intention of the prisoner Moobaruck to murder her husband is contained in her own confession. It was made known to her on the evening the murder took place, and she yielded a tacit assent to the perpetration of the deed by refusing, though solicited, to return to her husband's house to sleep that night. There is nothing, however, in the evidence to shew, that she instigated the prisoner Moobaruck to commit the murder, or that she was aware of his intention to do so, until the fatal deed was on the point of being carried into effect. It must further be borne in mind, that she was in the vicinity of no Police authority, to whom to make known the intention or look for aid for its prevention. The position which the prisoner held among the few people of the cantonment might also have deterred her from disclosing to them his intentions. Her conduct has been depraved and heartless to a shocking extent, but

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I consider transportation too severe a punishment for the concealment, and would mitigate to ten years' imprisonment, with labor befitting her sex.

"In respect to the prisoner Ghalah, the proof of his conviction rests likewise on his own confession. He describes himself to have been on terms of intimacy with the prisoner Moobaruck; he admits, that he over-heard a conversation between the prisoner Moobaruck and the prisoner Sona, in which the former expressed his determination to murder the deceased. In judging of his act of concealment before the fact, it must be borne in mind, that had the prisoner laid information against the prisoner Moobaruck of his intention to murder, that it was unsupported by any evidence, and that Natives are not possessed of that moral courage which would induce them to run the risk of bringing down emmity and revenge on themselves. In respect to the concealment after the fact, he would not appear to have been more concerned than the others composing the working party, who were all cognizant of the murder having been committed by the prisoner Moobaruck, he had indeed, perhaps better excuse for not disclosing the fact, if shades of difference may be drawn, as it was betraying a man he considered his friend. I think five years with hard labor would be punishment sufficient."

Minute by Mr. H. Brown. "I have read these proceedings, and although the recognition of the deceased Petta Purdéshee is not shewn by any of the members of the Inquest, yet from the evidence of the witnesses for the prosecution, and the admission of the prisoners, there can be no doubt that the remains exhibited before the Inquest were the identical remains of the deceased Petta. The murder of Petta is proved by two witnesses to have been committed by the prisoner Moobaruck, and this has been corroborated by the confession of the prisoner Sona, and the qualified admission of the prisoner Moobaruck, that he heard that the deceased had squeezed his own testicles. A most improbable act. I have no doubt that the deceased Petta's murder was effected by the prisoners, Moobaruck and Sona, in consequence of his

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being much in the way of their having criminal connexion together. The prisoner Ghalah's conduct betrays much culpability, in as much as he was aware of the murder having been intended, knew of its having been committed, but he pleads fear of the consequences, viz. that the prisoner Moobaruck would injure him, if he divulged the circumstances. I would confirm the convictions, but I would mitigate the sentence of death to transportation beyond the seas on the first prisoner, Moobaruck; I would confirm the sentence on the prisoner Sona, and I would mitigate the sentence of transportation to imprisonment for five years with hard labor on the prisoner Ghalah."

Minute by Mr. Bell: "The question referred for my consideration is the extent of punishment to be awarded to the prisoners Moobaruck and Sona. As to the prisoner Moobaruck, I can see no reason why the sentence of death should not be carried out under the conviction recorded, and as regards the female prisoner, Sona, I am disposed to concur in the reason urged by Mr. Pyne for a mitigated punishment of ten years. The Law requires that confessions must be taken strictly as a whole, and as Sona has urged the fear of violence from Moobaruck as the motive which prevented her disclosing his intention, we are bound to admit it as an extenuating cause.

Reg. XIII. Sec. XXVII. clause 2, of 1827.

The Court finally confirmed the sentence of death against Moobaruck, and mitigated that against the prisoner Sona to ten, and that against Ghalah to five, years' imprisonment with labor.

THE CASE

of

BHOWKENG, Coolee, and three others.

Charge—*Treason.*

1845
15th December.

The case of BHOWKENG, and three others.

In a case where four prisoners were tried for Treason, three were convicted on the clear and positive testimony of two pardoned accomplices, supported by other corroborative evidence, and the admissions of the three prisoners themselves; and it was held in regard to the fourth, who denied the charge, that since the truth of the evidence of the accomplices had been unequivocally established with respect to the other three prisoners, its veracity might be justly presumed against the fourth, who was accordingly convicted and sentenced to death.

This case was tried at Tannah, on the 27th day of October 1845, before a Special Commissioner appointed by the Honourable the Governor in Council, under the provisions of Act V. of 1841, when the prisoners, Bhowkeng, Bappoo Bangria, Hurree Sunkoo, and Essoo Hemajee, were arraigned on a charge of Treason. Bappoo Bangria pleaded, guilty, and the other three prisoners, not guilty.

It appeared from the proceedings on this trial, that owing to the excesses committed by regularly organized gangs of predatory coolees, under Raghojee Bhangria and other lawless leaders, the peace and tranquillity of the Konkun and Poonah Zillahs had been seriously disturbed, and in order to prevent the depredation to which these districts were exposed, several bodies of troops were ordered out by the Government to preserve the peace. Some of these troops were broken into detached parties, and placed at the different towns, to give confidence and protection to the inhabitants. One party, consisting of ten men of the 23rd Regiment of Native Infantry, was stationed at Petta Warray, when at midnight on the 15th of January 1845, they were attacked by a gang of about eighty persons, raised and employed for the purpose of "open depredation," armed with matchlocks, swords, and bows, and arrows. The evidence in the case was chiefly that of two accomplices, who had received pardons, and were admitted as witnesses for the prosecution. By their depositions it was established, that they had belonged to a gang of about eighty men, of which the prisoners, Bhowkeng and Bappoo Bangria, were leaders, and Hurree and Essoo, members; that they roamed about from village to village, plundering and levying "khund" (ransom); that being near Petta Warray, where they were aware some Government troops

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were stationed, Bhowkeng proposed to Bappoo to attack them, and arranged a plan for doing so. The gang accordingly set out the same night for Warray, and on approaching the town fired several shots, which were returned by the troops, who wounded some of the gang, among others the prisoners, Hurree and Essoo, whereupon the gang made off. The four prisoners were present at this attack, and they were all armed. The testimony of these accomplices was very satisfactorily corroborated by one Wasdeo Cassinath, who deposed that he was travelling through the Konkun, near the village of Sajewan on the 20th of November 1844, when a gang of robbers pounced upon him, and carried him off into the jungles; that during the period he was detained by the gang, they plundered Gowrapoor, and levied khund at many villages, for which they made him write the receipts; that the prisoners Bhowkeng and Bappoo planned the attack on the Government troops at Warray; that one night the gang set out for this purpose, leaving witness in the jungles under a guard. Witness on that occasion heard the report of fire-arms, and about an hour afterwards the gang returned, and said five or six of their number had been wounded. The four prisoners were among the gang that started to attack Warray, and were all armed. Other witnesses were called, who established the fact of an engagement having taken place between the gang and the troops, in which encounter one of the latter was wounded with an arrow.

The prisoner Bhowkeng throughout his trial denied the charge, and in his defence alleged, that Bappoo had accused him from animosity. Bappoo made a full and free confession of his guilt before the Magistrate, and confirmed the same before the Special Commissioner. Hurree and Essoo also made detailed confessions, but qualified them by saying they were forced by Bappoo to join the gang.

The Special Commissioner (G. L. Farrant) recorded his finding as follows:—"The plea and fully confirmed confession of the prisoner Bappoo, clearly substantiate the charge against him, and the evidence and the fully confirmed confessions of

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the prisoners Hurree and Essoo against them respectively. But with regard to the prisoner Bhowkeng, who has made no admissions, the chief evidence being that of his accomplices, the question is, whether it has received the degree of confirmation legally requisite to entitle it to full confidence.

Reg. XII. of 1827, Sec. XXXV. Cl. 2.

An accomplice is a perfectly competent witness against a principal, though the fact of his being implicated in the same offence, and an interested party, and other similar causes, detract very materially from his credit, and his testimony is, therefore, to be received with considerable distrust, and requires adequate corroboration accordingly; but it unquestionably is not necessary, that it be confirmed in every minute particular by two additional witnesses, or the object of the Law would be defeated, and if such evidence could be obtained the aid of the accomplice would be superfluous altogether. To fulfil the condition of the Law according to its spirit, it is sufficient that the evidence of the accomplice be confirmed to such an extent as fairly to test the credibility of his story as a whole, and if, in an indictment against several, the testimony of an accomplice be confirmed against some of the prisoners, it would in the like manner be held in law confirmatory of his testimony against the rest, in as much as it becomes generally verified by the degree of confirmation it has received; so, in the present instance, the truth of the evidence of the accomplices being unequivocally established with respect to three of the parties by their own admissions, the truth of this evidence against the remaining party may justly be presumed; and to the Court's judgment, indeed, even were the evidence of the two accomplices against the first prisoner sustained by nothing further than the admissions of his confederates, (though such admissions, not being evidence bear in themselves no weight against him,) it would alone, so tested, legally warrant his conviction. But there is yet stronger corroboration in the evidence by the eye-witness to the facts described, whose veracity there is no ground to impeach or suspect, and whose account accurately corresponds with

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and confirms both that of the accomplices, and the other prisoners; and the Court, duly bearing in mind the caution to be observed in receiving evidence of the kind adduced in this case, and giving the prisoner the full benefit of all doubts attending it, is of opinion, that the clear and positive testimony of the two pardoned accomplices, agreeing in every point, supported by direct corroborative evidence in every particular, and deriving confirmation collaterally from the confessions of the other prisoners, in the manner above mentioned, affords the most conclusive proof of the guilt of the prisoner Bhowkeng. From the evidence and confessions of the prisoners, as recorded on this trial, it appears the prisoners formed part of a regularly organized gang, raised for the purpose of public depredation, of which gang the two first prisoners were the chiefs, and that after pursuing a systematic career of plunder and lawless outrage, they finally attacked the Government troops, thus perpetrating an overt act constituting Treason under the circumstances described in the arraignment." The Special Commissioner then convicted the prisoners of the crime of Treason, and sentenced each and all of them to be taken to the usual place of execution at Tannah, and there severally to be hanged by the neck until dead, and that their property be confiscated to the State. The Special Commissioner, in submitting his proceedings in this case for the confirmation of the Judges of the Sudder Foujdaree Adawlut, recommended the prisoners Hurree and Essoo to mercy.

Regulation XIV. of 1827, Section XII. Clause 2, and Act V. of 1841, Section III.

The Court of Sudder Foujdaree Adawlut (present, J. Pyne and B. Hutt), concurring in the finding of the Special Commissioner, confirmed the conviction and sentence, and directed the proceedings to be laid before Government under the provisions of Act V. Section V. of 1841, with their recommendation that in the case of the prisoners, Bhowkeng and Bappoo Bangria, the Law be allowed to take its course, and in the case of the prisoners, Hurree Sunkoo and Essoo Hemajee, that their capital sentences be commuted to transportation for the terms of their natural lives.

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On the 15th of December 1845, the Honorable the Governor in Council was pleased to communicate his concurrence with the resolution of the Court, and the requisite warrants were issued accordingly.

THE CASE

of

JEWUN ROW BIN RAMCHUNDER ROW GHOREPUDAY, and 14 others.*

Charge—*Treason.*

1846
20th January.

The case of JEWUN ROW BIN RAMCHUNDER ROW GHOREPUDAY, and others.

In this case the prisoners were charged with Treason, in having joined a body of armed insurgents raised and employed to make war against the Rajah of Kolapoor and his allies, the

The trial of these prisoners was held before a Special Commissioner, appointed by the Honorable the Governor in Council, under the provisions of Act V. of 1841, on the 1st day of October 1845. The indictment charged the prisoners with Treason, in having joined a body of armed insurgents raised and employed to make war against the British Government of Bombay, and the adjacent state of Kolapoor, and for the purpose of "open depredation," in having on the 9th day of October 1844, corresponding with Bhadrupud Wud Dwa-

* 1. Jewun Row bin Ramchunder Row Ghorepuday, a resident of Kolapoor.
2. Ameen Dessai Wullud Kumal Dessai, a resident of Kolapoor.
3. Veerappa bin Kenchappa Moortya, a resident of Kolapoor.
4. Ramappa bin Sawunt Naique Goodya, a resident of Chickodee.
5. Geeresappa bin Rayappa Akewat, a resident of Chickodee.
6. Wittul Bhut bin Appa Bhut Joshee, a resident of Chickodee.
7. Jamalshah Wullud Janee Hamed Khan, a resident of Kolapoor.
8. Ranojee bin Sultan Naique Morbola, a resident of Kolapoor.
9. Suttia Wullud Mulharee, a resident of Chickodee.
10. Dadoo Wullud Fakerqodeen Moolla, a resident of Chickodee.
11. Duttoo Appajee Koolkurnee, a resident of Chickodee.
12. Dhondee bin Mookoondjee Soorwonsee, a resident of Goondekoper.
13. Syajee bin Akojee Patell, a resident of Chickodee.
14. Bheiroo bin Hoozooria bin Rajoo Powar, a resident of Kolapoor.
15. Phirangoo bin Tookaram, a resident of Kolapoor.

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dusee Shuke 1766, attacked and plundered the thanna and town of Chickodee, belonging to the Honorable the East India Company, and situated in the Talook of Chickodee, Zillah Dharwar; in having released the prisoners then and there confined by the British Authorities; in having seized and carried off as a prisoner, one Narrain Row Bhemajee, a karkoon in the service of the Honorable the East India Company; in having wounded one Morobin Hurba, a peon in the service of the said Government; in having carried off treasure from the public treasury of Chickodee, belonging to the said Honorable East India Company, amounting to Rupees 4,708-3-2; and in having plundered and carried off other private property, amounting to Rupees 66,000: and the prisoner, No. 11, Duttoo Appajee, in having in addition received formal charge of the Tanna of Chickodee from the said insurgents.

British Government of Bombay; in having attacked and plundered the town of Chickodee, situated within the British territory; in having taken formal possession of the said town in the name of one Chimma Saheb, whom the insurgents wished to set up on the throne of Kolapoor, in opposition to the authority of their lawful prince, and that of the British Government.

A sentence of death passed upon one of the leading criminals in this treasonable attack, was commuted by the Honorable the Governor in Council to transportation for life, on the ground, that he was a subject of the Kolapoor state, and not a British subject.

The prisoners severally pleaded, not guilty.

To support this indictment an overwhelming amount of evidence was adduced, of which the following is the substance: H. W. Reeves Esquire, the Political Agent in the Southern Maratha Country proved, that at the time the town of Chickodee was attacked, a large force of British troops, and a portion of those of the Rajah of Kolapoor, under the Sirlushkur, were encamped before the Fort of Samunghur, under the Command of Major General Delamotte, C. B. That the Gudkuries of Samunghur, as also those of Boodurghur, were at that time in open rebellion against the Rajah of Kolapoor, their lawful prince, whom they, in opposition to his authority and that of the British Government, his allies, wished to depose, and to set up on the throne in his stead his younger brother Chimma Saheb. That the whole of the Kolapoor territory was in a state of insurrection; that the established Government of that principality had been usurped by the insurgents, who imprisoned the leading officers of the State, and despatched bands of armed men in different directions for insurrectionary purposes, that this spirit had spread itself across

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the British frontier, and that the town and neighbourhood of Chickodee were actually in a state of insurrection.

It was shown by the testimony of the pardoned confederates of the prisoners, that early in October 1844, a large body of men were raised at Boodurghur, for the relief of the garrison of Sámunghur, then beseiged by the allied British and Kolapoor forces, that when this body was put in motion, its numbers amounted to from 500 to 600 armed men, that the chief command over this insurgent force was held by one Abbajee Row Ghorepuday, since deceased: that among other subordinate leaders were the prisoners, Ameena Dessia, No. 2, and Dhondee bin Mookondjee, No. 12: that on Sunday the 6th of Oct., this force was at Pimpulgaum, where it was joined by the aforesaid Dhondee, the prisoner No. 12, with one hundred recruits; that on Tuesday the 8th, it was at Hunmeenal considerably to the left of the right line of march upon its destination, Samunghur, but still in the Kolapoor Territory. Here the insurgent force was joined by Veerappa, the prisoner No. 3, and many others, and here a council of the leaders was held, when it was finally resolved to alter the original plan, and to suspend for a time the ultimate object of relieving Samunghur, and in order to remove a primary difficulty arising from the want of funds, it was determined to attack and plunder the town of Chickodee. The insurgent force accordingly diverged from the direct road, crossed the British Frontier on their left, and marched upon that town. At this time the force of the insurgents was stated to have been about 2,000 men.

It was clearly proved by the Police peons on guard over the Kucherry and Fort at Chickodee, as also by numerous inhabitants, that at 3 P. M. on Wednesday the 9th of October 1844, this force attacked the town of Chickodee, that they challenged the guard to surrender in the name of Chimma Saheb, the Rajah of Kolapoor, saying, they were not thieves, but that they had come to take possession of the place, and to establish their own Government and Thanna therein, and threatening to cut to pieces all who resisted their authority.

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That on surrender, they entered the kucherry, headed by the deceased Abbajee, and the prisoner Ameena, No. 2, made prisoners of Narrain Row Bhémajee, a Government karkoon, and a number of peons; wounded one Moroo Hurba, and threw away and destroyed the Government Records. That they then proceeded to the Fort, where they released sixty-five prisoners therein confined, among whom was the prisoner Geereeappa, No. 5; that they forcibly entered the public Treasury, took possession of and carried off Government property in cash and stamps, of the value rupees 4,708-3-2; and that they finally sacked and indiscriminately plundered the town until night fall, or about 7 P. M., when public proclamations were made by beat of drum, under the orders of the insurgent leaders, to the effect, that as they had taken possession of the town and district of Chickodee in the name of the Rajah of Kolapoor, all plunder was to cease; accordingly plundering appeared from that time to have been generally suspended.

It was proved, that the sum of money plundered from the Treasury was set apart as a fund for the especial use of the insurgent cause: and one witness declared, that an advance of a quarter of a rupee per man was made to the insurgents by their chiefs from these very funds. The value of the property plundered from the inhabitants on this occasion was estimated after careful enquiries at rupees 66,000. It was also established in evidence, that the insurgent force held possession of the Town of Chickodee during the night of October the 9th, which they employed in making arrangements for its protection; that they made the prisoner Duttoo, No. 11, the Koolkurnee of Chickodee, write Rokha Chittees to the neighbouring villages, announcing their occupation of the town in the name of the Rajah of Kolapoor; and also made him draw out a written agreement making over to him, as Koolkurnee, the formal charge of the town; that on the morning of the 10th the insurgents evacuated the town of Chickodee, and pursued their march towards Samunghur. and that on arriving within sight of that Fort, and of the

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British Camp, they were immediately attacked by a party of Cavalry, and dispersed with great slaughter. Much of the plundered property was recovered, and many were taken prisoners; among others the prisoner Dhondee Patell, No. 12.

From another class of witnesses, the property recovered was clearly identified, and the whole of the prisoners, with the exception of Geereeappa, No. 5, and Duttoo, No. 11, were fully recognized as having been present, and actively engaged in the attack, and plunder of the town of Chickodee. Such was the case for the prosecution, as detailed in the depositions of upwards of sixty witnesses.

The defence of the prisoners before the Special Commissioner consisted of a general denial, but their statements before the magisterial authorities contained many admissions, qualified by the plea of their having been forced to join the insurgents.

The Finding of the Special Commissioner (J. G. Lumsden), which is too full for insertion in this report, was divided into three parts. The first gave a connected narrative of the facts of the case. The second showed that these facts amply supported the charge of Treason, as laid in the indictment. And the third part brought forward the whole of the evidence bearing on the case of each prisoner. The Special Commissioner acquitted the prisoner Geereeappa, No. 5, who was one of those prisoners released by the insurgents from confinement in Chickodee, on the ground that it was now here shown, that he had, on his release, joined or taken any active part with the insurgents, but on the contrary, that he had made his escape to his own house at Herecodee; the Patell of which village proved his arrival on the same day. The prisoner, No. 11, Duttoo, was also acquitted on both the charges preferred against him; the evidence proving, that instead of his having joined the insurgents in the plunder of Chickodee, his own house had been sacked, and that he had been forcibly put in possession of the town on its evacuation by the insurgents. But in regard to the remaining prisoners, the Special Commissioner found them one and all guilty of Treason, as laid in the in-

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dictment, and sentenced them severally to death and confiscation of property, subject to the confirmation of the Judges of the Sudder Foujdaree Adawlut, in communication with Government.

The Special Commissioner having thus terminated this trial, considered that as great distinctions were observable in the present case, in regard to the degrees of criminality which had been proved against the prisoners, and that as the Law gave to the Judge no discretion in awarding punishment, he had yet a duty to perform, which was to determine the degrees of criminality proved, leaving it to the Superior Tribunal to relax the severity of the Law.

Act V. Section III. of 1841, and Regulation XIV. Section XII. clause 2 of 1827.

The Special Commissioner considered that the prisoner, No. 2, Ameen Dessai, and prisoner, No. 12, Dhondee bin Mookoondjee, as the leaders, as well as the originators of this treasonable attack, were guilty in the first degree.

That the prisoners

No. 3. Veerappa bin Kenchappa Moortya,
No. 4. Ramappa bin Sawunt Naique,
No. 7. Jamalshah Wullud Janee Homed Khan,
No. 10. Dadoo Wullud Fakeeroodeen Moolla,
No. 13. Syajee bin Akojee Patell,

were guilty in the second degree; and that the prisoners

No. 1. Jewun Row bin Ramchunder Row Ghorepuday,
No. 6. Wittul Bhut bin Appa Bhut Joshee,
No. 8. Ranojee bin Sultan Naique,
No. 9. Suttia Wullud Mulharee,
No. 14. Bheiroo bin Hoozooria,
No. 15. Phirangoo bin Tookaram,

were guilty in the third degree.

On the case being laid before the Sudder Foujdaree Adawlut, the Court (present, A. Bell and H. Brown) confirmed the conviction and sentence on all the prisoners. The Court also concurred with the Special Commissioner in regard to the degrees of guilt attached to the prisoners respec-

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tively, and therefore resolved in submitting the case to Government, in accordance with Act V. of 1841, to recommend, that the Law be allowed to take its course on the prisoners

No. 2. Ameen Dessai Wullud Kumal Dessai, and
12. Dhondee bin Mookoondjee Soorwousee:

that the sentences of the prisoners

No. 3. Veerappa bin Kenchappa Moontya,
4. Ramappa bin Sawunt Naique Goodya,
7. Jamalshah Wullud Janee Homed Khan
10. Dadoo Wullud Fakeroodeen Moolla, and
13. Syajee bin Akojee Patell,

be mitigated to transportation for life: and those of the prisoners

No. 1. Jewun Row bin Ramchunder Row Ghorepuday,
6. Wittul Bhut bin Appa Bhut Joshee,
8. Ranojee bin Sultan Naique Morbola,
9. Suttia Wullud Molharee,
14. Bheiroo bin Hoozooria bin Rajoo Powar, and
15. Phirangoo bin Tookaram Scinda,

be mitigated to imprisonment for (14) fourteen years with hard labour.

In reply, the Honorable the Governor in Council was pleased to comply with the Court's recommendation in reference to all the prisoners, with the exception of the prisoner, No. 2, Ameen Dessai, whose sentence of death his Honor in Council, in virtue of the powers vested in him by Clause 3, Section XXXI. Regulation XIII. of 1827, commuted to transportation for life, on the ground, that he was a subject of the Kolapoor state, and not a British subject.

THE CASE

of

HURREE BIN BABOO KOTEYKUR.

Charge—*Treason.*

1846
4th May.

The case of HURREE BIN BABOO.

A sentence of death and confiscation of property passed on the prisoner in this case on conviction of Treason, was mitigated by the Honorable the Governor in Council to a term of ten years' imprisonment, in consideration of the prisoner's having been so severely wounded at the time of his apprehension as to render him a cripple.

The prisoner being convicted of Treason on his own confession made before the Special Commissioner (J. G. Lumsden) at Rutnagiree on the 3d day of January 1846, was sentenced to death and confiscation of property.

It was clearly established, that during the disturbances in the Sawuntwaree State, in the years 1841 and 1845, the prisoner had joined a body of armed insurgents, raised and employed for treasonable purposes, under the command of Baba Bhoogta, (a partizan of the notorious Phoond Sawunt,) who had been roaming about the Malwun Talooka of the Rutnagiree Zillah, committing numerous acts of outrage and depredation; and that on the 10th of March 1845, the prisoner and other insurgents being surprised by a party of troops consisting of thirty rank and file of the 21st Regiment of Native Infantry, they offered resistance, and fired on the Government troops. In the attack which ensued, the prisoner was very severely wounded in three places. At the trial, the prisoner was, in consequence of his wounds, a complete cripple, and on this ground, as well as on account of the ignorant state of the class of society to which the prisoner belonged, the Special Commissioner recommended him to the Superior Court for mercy.

On the case being submitted to the Sudder Foujdaree Adawlut, the Court (present A. Bell and G. Grant) confirmed the conviction and sentence. The Court observed that this was the same charge in which a conviction was recorded in case No. 6 of 1845, tried by a similar Commission, and in which a mitigated sentence of transportation for life was passed against a prisoner named Sheik Abdoola wullud Sheik Adum. The Court remarked, that the Special Commissioner in submitting his proceedings in this case, for the confirma-

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The case of HURREE BIN BABOO.

mation of the Superior Court, recommended the prisoner for mercy, on the grounds of his being a complete cripple, in consequence of his wounds, and of the ignorant state of the class of society to which he belonged. The measure of guilt in both cases being the same, the Court had no hesitation in recommending to Government a similar punishment, but as this prisoner would only prove a burden to whatever colony he might be transported to, and as thus the sentence would be opposed to the instructions communicated to the Session Judge of Tannah in Mr. Secretary Wathen's letter of the 2nd October 1834, the Court considered, that the prisoner ought to be imprisoned for life, unless his Honor in Council was disposed to pass a more lenient sentence, which, owing to the crippled state of the prisoner, the Court was of opinion might be done without incurring risk. The proceedings were then laid before Government in accordance with Act V. of 1841.

On the 28th of April 1846, the Chief Secretary to Government intimated to the Court, that the Hon'ble the Governor in Council had been pleased, in consideration of the prisoner's crippled state, to commute the sentence of death passed upon him to ten years' imprisonment. The usual warrant was accordingly issued.

THE CASE

of

ZEEMEE, WIFE OF RAMA COONBEE.

Charge—*Perjury.*

1846
18th May.

The case of ZEEMEE AYAL RAMA.

The prisoner convicted of Perjury, but in consideration of the relationship (daugh-

This prisoner was tried for wilful Perjury, on the 18th day of April 1846, before the Session Judge of Ahmednuggur.—Plea, guilty.

The false deposition showed, that the prisoner, on being examined as a witness in the Court of the Special Commis-

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The case of ZEEMREE AYAL RAMA.

sioner of Ahmednuggur, on the 26th day of February 1846, wilfully deposed, on solemn affirmation, that one Rai kome Bhawanee had not told her, that a person who left Nassick in company with the prisoner and others, was the Rebel Ragoojee Bangria, and that she did not know any thing about him, and that there was not on that occasion a fourth person with them, these matters being material to the conviction of a certain party then on his trial on a charge of concealment of Rebellion before the said Special Commissioner, and being in direct opposition to her former deposition before the Magistrate of Nassick, which the prisoner admitted to be true.

ter-in-law and father-in-law) existing between the prisoner and the party against whom she was called upon to give evidence, the Sudder Foujdaree Adawlut mitigated a sentence of two years' imprisonment passed by the Session Judge to one month.

The Session Judge (J. W. Hunter,) on the evidence adduced, and on the admission of the prisoner, convicted her of the charge preferred, and considering her motive clearly to have been to screen a relative (her father-in-law) on his trial for a criminal offence, sentenced her to two years' imprisonment with labor befitting her sex, such sentence to be subject to the confirmation of the Sudder Foujdaree Adawlut, under the provisions of Regulation XXX. Section IV. of 1827.

On the case being laid before the Sudder Foujdaree Adawlut, the Court (present A. Bell and B. Hutt,) finally resolved to confirm the conviction, but under the circumstances of the relationship* existing between the prisoner and one of the parties accused, against whom she was called on to give evidence, remitted the unexpired portion of her sentence of imprisonment, and issued a warrant for her release.

* It has also been held by the Sudder Foujdaree Adawlut, that the evidence of a child against its parent, and a husband against his wife, and *vice versa*, should not be taken without special necessity.

THE CASE

of

HUSSAN NUTHOO, and another.

Charge—*Murder*.

1846
18th May.

The case of HUSSAN NUTHOO, and another.

In a case of Murder or Culpable Homicide, where death ensued 180 days after the wounding, it was ruled by the Sudder Foujdaree Adawlut, that the prisoner was liable to punishment by the Regulations, as death had taken place within six English Calendar months after the Assault.

The prisoner Hussan Nuthoo was tried on the 27th day of April 1846, before the Session Judge of Ahmedabad, for the Murder of one Jamal Hajee, and the prisoner Alumjee as an accessary for aiding and abetting.—Plea, not guilty.

The Session Judge (A. Remington,) acquitted the prisoner Alumjee, in the absence of sufficient proof, and convicted the prisoner Hussan Nuthoo, under the circumstances of the case, of Culpable Homicide, and sentenced him, under Section XXVII. Regulation XIV. of 1827, to ten years' imprisonment with labor.

The Session Judge, in referring this case for the confirmation of the Superior Court, noticed that the remarkable feature of the case was the length of time that had elapsed between the date of the assault, in which the deceased was wounded, viz. on the 15th March 1845, corresponding with the 7th of Falgoon shood sumwut 1901, and the date on which he died, viz. on the 10th September 1845, corresponding with the 9 Bhadrapud shood sumwut 1901, the interval being 180 days. In defining the crimes of Murder and Culpable Homicide, it is laid down in the Regulations, that it is essential that death should take place within six months after the act causing death was committed. The question therefore was, whether the months here indicated were English Calendar months or Lunar months.* If the time intervening between the assault and the death of the deceased was computed according to the English Calendar, the period of six months required to bring the offence within the limit prescribed by the Regulations had not expired. On the other hand, reckoning the months as Lunar months, the time

* The Hindoo months are Lunar ones.

had expired, as death did not occur until 180 days after the assault. The Session Judge therefore considered, that in the absence of precedent, the question was one of much nicety, and should therefore be decided by the Superior Court.

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The case of HUSSAN NUTHOO, and another.

The Court of Sudder Foujdaree Adawlut (present A. Bell and B. Hutt,) entertained no doubt of the death of the deceased having been caused by the wounds he received at the hands of the prisoner, and as the deceased's death took place within six English Calendar months* after the act was committed, the Court held that the prisoner Hussun Nuthoo had rendered himself liable to punishment by the Regulations, and therefore confirmed the sentence of the Session Judge.

* Vide the Penal Code of the India Law Commissioners, Chapter I. Art. 36.

THE CASE

of

HUR PATELL BIN CHIND PATELL.

Charge—*Gang Robbery.*

1846
27th July.

The case of HUR PATELL BIN CHIND PATELL.

The prisoners Hur Patell, Kallia, Bhow Cumlia, and Walkia, were arraigned at the bar of the Session Court of the Konkun, on the 28th day of May 1846, on a charge of Gang Robbery by night, attended with violence.

Warrants in execution of former convictions not to be brought forward as evidence for the prosecution, but after conviction, due weight to be given to them in awarding punishment.

The charge was clearly proved against the two first prisoners, and they were sentenced by the Session Judge, Hur Patell to seven years' imprisonment with labor, and Kallia to five years'. The other prisoners were acquitted.

Clause I. Section XXXVII. Regulation XIV. of 1827.

It however appeared from the Session Judge's proceedings in this case, that a copy of a warrant for the imprisonment of the prisoner Hur Patell for three years, on a former conviction of Gang Robbery, was read and recorded as evidence on the part of the prosecution.

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The case of HUR PATELL BIN CHIND PATELL.

On petition to the Sudder Foujdaree Adawlut by the convicted prisoners, the Court (present B. Hutt and G Grant, Puisne Judges) determined that there was no cause to disturb either the conviction or sentence of the Session Judge, and the Petition was therefore rejected; but the Court remarked, that warrants to establish former convictions should not be brought forward as part of the evidence for the prosecution, as tending to create an unfavorable bias against the prisoner, but that after conviction had been recorded they were deserving of weight in awarding punishment.

THE CASE

of

TRIMBUCK KHRISHN, and two others.

Charge—*Abuse of Official Authority.*

1846
18th August

The case of TRIMBUCK KHRISHN and two others.

In a case where two prisoners were charged with aiding a Mahalkurree in the abuse of his official authority, by torturing a person to extort a confession, an objection was taken on their behalf, that such aiding was not punishable under the Interpretation on Cl. 5, Sec. I. of Reg. XIV. of 1827, dated 16th October 1839. Held by the Sudder Foujdaree Adawlut, that the Interpretation cited was limited to offences against the Revenue Regulations, and did not extend to other criminal Acts.

The prisoners were tried on the 4th of March 1846, before the Assistant Session Judge of Dharwar, on the following charges—Trimbuck Khrishn, the Mahalkurree of Demur, with gross abuse of official authority, in having made over one Ayappa to the other two prisoners to be tortured, in order to extort a confession from him, and with being present while the said Ayappa was so tortured; and the prisoners Nimbana and Suntveerappa with having aided in the above offence.—Plea, not guilty.

It was proved at the trial, that about the end of January 1846, a gang robberry attended with violence took place in the house of the prisoner Nimbana, and property to a considerable amount was alleged to have been stolen. No traces were discovered, and the Acting Magistrate attributing failure to the want of vigilance on the part of the Mahalkurree, the prisoner Trimbuck issued some stringent orders to him, and also threatened to fine him. After a lapse of some weeks, Ayappa

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The case of TRIMBUCK KHRISHN and two others.

and several others were taken up on suspicion, and placed in the Mahalkurree's Chowkee. It was proved, that while Ayappa was thus in custody, the prisoner Trimbuck sent one Oosman, a peon, to bring him to his house; that this peon brought Ayappa into the back yard of Trimbuck's house, where he met the other two prisoners, and was then told to retire; that Trimbuck called upon Ayappa to confess to the gang robbery which took place in Nimbana's house, and on his denying all knowledge of it, the prisoners Nimbana and Suntreerappa seized him by the hands, and placing their feet on the back part of his wrists, violently pulled his fingers backwards; they next threw pounded pepper into his eyes, and beat and otherwise ill used him. The prisoners then recalled Oosman, and told him to take Ayappa back to the Chowkee. Oosman deposed, that as he was returning to the Chowkee, Ayappa complained of the ill treatment he had received, that his eyes were watering, and in a very inflamed state, and that his hands were much swollen. Ayappa's wife, on hearing of what had occurred, went to the Magistrate, who happened to be encamped in the neighbourhood, and laid information against the Mahalkurree, the prisoner Trimbuck; whereupon the Magistrate repaired to Demur, investigated the complaint, and committed the prisoners for trial to the Sessions on the present charge. The prisoners, in their defence at the trial, denied the charges preferred against them, alleging, that Ayappa had injured his own hands, and thrown pepper in his own eyes, with the intention of accusing them of torturing him, so that he might escape the punishment which awaited him for the crime of gang robbery.

The Assistant Session Judge (A. K. Corfield) found the prisoner Trimbuck Khrishn guilty of gross abuse of official authority in his Police capacity of Mahalkurree, and sentenced him to be imprisoned for the space of one year, and to pay a fine of Rs. 500, or in default to be further imprisoned for two years. The prisoners Nimbana and Suntveerappa were also convicted of aiding in the offence, and sentenced severally to be imprisoned for six months, and to pay a fine

Reg. XII. Sect. VIII. Cl. 1, of 1827

Reg. XIV. Sec. I. Cl. 5, and Reg. XII. Sec. VIII. Cl. 1, of 1827.

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The case of TRIMBUCK KHRISHN and two others.

of Rs. 250, or in default to suffer one year's further imprisonment.

On petition by the prisoners, the case came under the review of the Court of Sudder Foujdaree Adawlut on the 26th July 1846, when the Vakeels engaged in behalf of the prisoners, Nimbana and Suntveerappa, urged, that the conviction and sentence recorded against their clients were contrary to Law, because they had been charged with aiding Trimbuck Khrishn in the abuse of his official authority as Mahalkurree, and torturing the complainant Ayappa, such an offence not being punishable under the Interpretation, dated the 16th of October 1839, on Cl. 5, Sec. I. of Reg. XIV. of 1827.

Minute By Mr. Hutt, Puisne Judge: "The objections raised by the Vakeels are altogether groundless. The Interpretation quoted has reference to pecuniary transactions under a Revenue Regulation, and not a Criminal one, under which the prisoners have been convicted, and though not specified, the charge does in reality accuse them of an assault. I would, then, reject the petition, but I would point out to the Session Judge, that the abuse of authority, and the assault, would have been better tried in separate cases, or under two Counts in one case. Such a course would have had the advantage of leaving no opening for cavil."

Mr. Grant dissenting from the above, the case was referred to a third Judge, Mr. LeGeyt, who recorded his opinion as follows: "Instigating or aiding in acts committed by public officers in breach of rules established for their guidance, is clearly an offence defined in Cl. 5, of Sec. I. of Reg. XIV. of 1827. The objection urged by the prisoners' Vakeels is therefore untenable. The Interpretation on which they rely should certainly be limited to the particular Law on which it was given."

Para. 5, Sec. I. Cl. 1, Reg. XIV. of 1827.

The Court therefore resolved to reject the prisoners' petition, seeing no cause to interfere with the conviction or sentence of the Lower Court.

THE CASE

of

OOTUMRAM ATMARAM, and two others.

1846
26th August.

The case of OOTUMRAM ATMARAM, and two others.

Charge—*Robbery by day with Force above Rupees* 50.

The prisoners Ootumram, Baee Umba, and Kirparam Koobèr, were tried for robbery, on the 4th of June 1846, before the Acting Session Judge of Surat.—Plea, not guilty.

A Hindoo husband cannot be convicted of robbing his wife,—the wife according to Hindoo Law being completely under the controul of her husband; but a dispute between them regarding their property should be determined by a civil action.

The prosecutrix deposed, that the prisoner Ootumram was her husband, and the other prisoners her near relations, and that they all lived together in a house in the City of Surat; that there had been a quarrel between prosecutrix and her husband regarding some ornaments and jewelry she had received as her marriage portion, and on the 29th of April 1846 she refused to give to the prisoner Ootumram a pair of silver toras or anklets, valued at Rupees 75, when a scuffle ensued, in which all the prisoners joined, and beat and kicked her; she tried to give the anklets to one Hurreebhaee, who was passing the house, but the prisoners assaulted him also, and at length forcibly took the silver anklets from her. The testimony of Hurreebhaee and of several neighbours corroborated this statement, and showed that force had been used.

The Acting Session Judge (R. Keays) considering the case proved, came to the conclusion, that the offence amounted to robbery as contemplated in the Regulations, and sentenced the prisoners Baee Nundee and Kirparam Koobèr to pay a fine of Rupees 50 each, or in default to be imprisoned for three months, but stayed the sentence in the case of the prisoner Ootumram, pending a second charge against him then under investigation.

Regulation XIV. Section XXXVII. Cl. 3, of 1827.

On the case being brought by petition under the review of the Sudder Foujdaree Adawlut, (present B. Hutt, P. W. LeGeyt, and G. Grant,) the Judges recorded the following opinions.

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The case of OOTUMRAM ATMARAM, and two others.

Mr. Hutt: "The prisoner Ootumram is represented to have stolen some ornaments from his wife, and to have given them to others who were aiding him in the forcible taking, these persons being, the one his own mother, and the other his uncle. It appears that the prisoner Ootumram is the complainant's second husband, and that the property alleged to have been stolen, was given her by her former husband, from whom she separated. The woman appears to have been giving the ornaments in question to her brother-in-law, when the husband interfered, a scuffle ensued, and the ornaments were taken. The parties are Hindoos, and according to the Hindoo Law, the wife is so completely under the controul of the husband, that I do not, from what the Shastree says, make this out to be an act that will come under the denomination of robbery; and I would acquit all the parties, because if it was not robbery in the husband, it could not be in those who only aided him, and I would leave them to settle their dispute in the Civil Court, binding the prisoners over in security for good conduct towards the complainant."

Mr. G. Grant dissenting from this minute, the case was referred to Mr. LeGeyt, who concurred in opinion with Mr. Hutt, that this was not a case of Robbery. The Court thereupon resolved to annul the sentence. The Court also pointed out to the Session Judge, that he should have taken the opinion of the Shastree of his Court in the case.

THE CASE

of

PANDOO WULLUD BAPPOO.

1846
28th September.

PANDOO WULLUD BAPPOO'S case.

In a case where a Mhar was charged with administering poison to cattle, it was held, that proof of the mere facts of his administering a certain substance, and of the cattle dying shortly afterwards, was insufficient for a conviction, without evidence of the nature of the substance administered.

Charge—*Wilful destruction of property.*

The prisoner was tried for the above offence, before the Session Court of Sholapoor, on the 19th of June 1846.

The facts of the case were briefly these:—Three boys, Suntoo, Tooka, and Hurree, on the morning of the 3rd of June, while grazing a drove of cattle in the jungles, saw the prisoner give something to a buffaloe belonging to one Ramjee, and to a bullock belonging to one Vittoo. On going to the spot, Suntoo succeeded in extracting from the mouth of the bullock part of a ball composed of a white substance sewn up in kurbee leaves. The prisoner after administering the ball made off, but was apprehended by Hurree, and taken to the Police Chowkee, where he stoutly denied the offence. It was proved by the prosecutors, that the bullock and the buffaloe both died on the same day.

The Session Judge (W. Birdwood) considered this evidence conclusive of the prisoner's guilt, and taking into consideration the numerous instances in which Mhars had been detected in poisoning cattle for the sake of their carcases, which by custom were their perquisites, he sentenced the prisoner to be imprisoned for the space of two years with labor.

Regulation XIV. Section XLII. Cl. 2.

The Court of Sudder Foujdaree Adawlut (present B. Hutt and P. W. LeGeyt) considered the evidence was unsatisfactory, inasmuch as there was no proof that the substance taken from the bullock was poisonous; if the production of this substance before the Session Court was impracticable, which however was not clear, endeavours should, the Court remarked, have been made to ascertain if the prisoner had been purchasing any poisonous drug, or was possessed of any more. The Court regretted that a person against whom such strong suspicions existed, should escape justice, yet on the meagre evidence adduced, it held, that the conviction could

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PANDOO WULLUD BAPPOO'S case.

not be legally sustained, and attributed the failure to the want of care in getting up the prosecution. The Court accordingly annulled the sentence passed, but directed the prisoner to find security for his good behaviour for 21 months in the amount of rupees 50.

THE CASE

of

SUNTOO WULLUD HYBUTRAO, AND DADA WULLUD PULLO.

1846
5th October.

The case of SUNTOO WULLUD HYBUTRAO, and another.

Charge—*Murder attended with Robbery.*

In this case two prisoners in the prosecution of a robbery inflicted a wound on a third party, which rendered a surgical operation necessary, and consequent upon that operation the patient died.

Ruled by the Sudder Foujdaree Adawlut, that this was murder.

The youth of a convict held to be a circumstance of mitigation in awarding punishment.

The prisoners, Suntoo and Dada, were arraigned before the Joint Session Judge of Ahmednuggur, on the 14th day of August 1846, on an indictment for murder, attended with robbery.—Plea, not guilty.

It was proved by the evidence adduced in this case, that on the 18th of April 1846 (corresponding with Chytre wud 7th 1768), the prisoners, Suntoo and Dada, enticed one Tookeram, the deceased, a child of six years of age, into the jungle, near the village of Pathurdee, and there robbed him of three gold earrings and a pair of silver bangles; in removing one of the bangles which was rather tight, the prisoners used such reckless violence, in hammering it with a large stone, as to occasion very severe contusions and injury to the hand and wrist of the child. After some short interval, the child Tookeram returned home, crying, and told his mother and several other villagers who had collected, what had occurred, and pointed out the prisoners, Suntoo and Dada, who were at this time standing in the crowd, as the perpetrators of the violence that had been committed upon him. They were thereupon arrested, and on search the three gold earrings and

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The case of SUNTOO WULLUD HYBUTRAO, and another.

a broken bangle were found in the turban of the prisoner Dada. On being taken into custody, both prisoners confessed their guilt before the Police officer. The prosecutor, the father of the deceased child, deposed to having applied remedies to heal the wounds and contusions on his son's wrist, but finding that the child got worse instead of better, deponent brought him in May 1846 to Ahmednuggur, and placed him in the Civil Hospital. Mr. Summers, the 1st Assistant in the Ahmednuggur Civil Hospital, declared, that he recolleeted the child Tookeram being admitted into the Hospital in May 1846; that his right arm was mortified from the hand to the elbow; that Doctor Atkinson, the Civil Surgeon, amputated the child's arm, as being the only chance of saving his life; and that the child was very weak, and only survived the operation fifteen days, dying on the night of the 26th of May 1846, from debility consequent on the operation. The child however would certainly have died, in deponent's opinion, if the operation had not been performed. A Jury, who held an inquest on the body of deceased, returned a verdict, that Tookeram Wullud Bowjee Jain's death was caused by amputating his right arm, an operation rendered necessary by injuries inflicted on his right wrist by the prisoners.

The prisoners Suntoo and Dada (the former a man of twenty-two years of age, and latter a boy of twelve) in their defence denied their original confessions, and threw the blame on a third party, but the attesting witnesses being called, the confessions were proved to have been voluntarily made.

The Joint Session Judge (C. Price) held, that the crime of murder was not established against the prisoners, because death ensued from weakness consequent on the operation of amputation of the deceased child's arm, and therefore found the prisoner guilty of the inferior offence of Robbery attended with serious assault, occasioning severe bodily suffering. The Joint Session Judge however stated, that it was in evidence that had the child Tookaram's arm not been amputated, he would have certainly died from the mortifications that had ensued consequent on the bruises he had received. The

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The case of SUNTOO WULLUP - HYBUTRAO, and another.

Regulation XIV. Sect. XXXVII. Cl. 3, of 1827, and Sect. XXIX. Cl. 1.

Joint Session Judge in awarding punishment, resolved, in consideration of the cruel and aggravated nature of the offence, to pass the highest punishment the Law provided for the offence proved, and therefore sentenced the prisoners to be severally transported beyond the seas for the term of their natural lives, subject to the final orders of the Sudder Foujdaree Adawlut.

On the case being laid before the Court (present B. Hutt and P. W. LeGeyt) the following minutes were recorded. By Mr. Hutt:—"The charge of Robbery with murder has been fully proved by the the evidence, as well as by the confessions of the accused. That death did result from the act of the prisoners, the Joint Session Judge has recorded his opinion, although he has only found the prisoners guilty of Robbery and serious assault. The Court therefore can only confirm the conviction, but it should be pointed out to the Joint Session Judge for his future guidance, that when death results in consequence of a deliberate act, that act amounts to murder. The extreme youth of the prisoner Dada renders it almost impossible that he could have been fully sensible of the enormity of the crime he was assisting to perpetrate, and it is most probable he was only acting a minor part in the transaction. I therefore concur in mitigating Dada's sentence as proposed by Mr. LeGeyt, but I would confirm the sentence of transportation on Suntoo."

By Mr. LeGeyt:—"I would confirm the conviction of both prisoners, and the sentence against Suntoo, but on account of the extreme youth of Dada (12 years of age) I would mitigate his sentence to imprisonment for two years, one week in every alternate month being in solitary confinement, and to receive thirty-six stripes, at three intervals of six months of twelve each. It should be noticed to the Joint Session Judge, that the reason he assigned for not convicting the prisoner of murder, is unfounded. It has been very lately held in Hawkey's case in England, on an objection of a similar nature being taken by Counsel, that if a patient die under a surgical

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The case of SUNTOO WULLUD HYBUT. RAO, and another.

operation rendered necessary by the illegal act of any person, that person is guilty of murder."*

The Court therefore confirmed the convictions of both prisoners and the sentence of transportation for life on Suntoo, but mitigated the sentence on Dada to the extent proposed by Mr. LeGeyt.

* NOTE.—The Common Law of England is thus laid down by Lord Hale, which may be taken as good guide for deciding similar cases :—

"If a man give another a stroke, which, it may be, is not in itself so mortal, but that with good care he might be cured, yet if he die of this wound within the year and day, it is homicide or murder, as the case is, and so it hath been always ruled.

"But if the wound or hurt be not mortal, but with ill applications by the party, or those about him, of unwholesome salves or medicines the party dies, if it can clearly appear, that this medicine, and not the wound, was the cause of his death, it seems it is not homicide, but then that must appear clearly and certainly to be so.

"But if a man receives a wound, which is not in itself mortal, but either for want of helpful applications, or neglect thereof, it turns to a gangrene or a fever, and that gangrene or fever be the immediate cause of his death, yet this is murder or manslaughter in him that gave the stroke or wound, for that wound, though it were not the immediate cause of his death, yet, if it were the mediate cause thereof, and the fever or gangrene was the immediate cause of his death, yet the wound was the cause of the gangrene or fever, and so consequently is *causa causati*."—*Lord Hale's Pleas of the Crown*, vol. 1. page 427, chap. XXXIII.

THE CASE

of

BERNARD PEAFORM AND LOUISA CHEMIN.

Charge—*Adultery*.

1846.
16th November.

The case of BERNARD PEAFORM, and another.

A Christian cannot be punished criminally for Adultery in any of the Hon'ble East India Company's Courts, within the Presidency of Bombay.

The provisions of Regulation XXII. of 1827, are not applicable to all residents in military camps, but to those only belonging to or connected with the Bombay Army.

The prisoner, Bernard Peaform, a native of Italy, residing at the Sungum, Purgunnah Havillee, Zillah Poonah, and Louisa Chemin, a Portuguese, residing in the Poonah cantonment, were brought before the Session Judge, on a charge of Adultery, the husband of Louisa Chemin being alive and present to prosecute, as required by Act II. of 1845.

On the arraignment of the prisoners, the Session Judge considered, that the fact of Louisa Chemin being an inhabitant of the Poonah cantonment, within the limits of which the offence had been committed, to be sufficient ground to exempt her, under Section III. Regulation XXII. of 1827, from the Court's Jurisdiction, and therefore discharged her from the bar, at the same time directing her to be taken before the Superintendent of Bazars, to be dealt with by him according to Law. The Session Judge then proceeded with the trial of the prisoner Bernard Peaform, who pleaded, not guilty.

The adultery being clearly proved by the evidence of the husband, Raphael Chemin, and of his son Joseph, the Session Judge (H. Brown) convicted the prisoner Bernard Peaform, and sentenced him, under extenuating circumstances, to pay a fine of rupees ten, or in default; to be imprisoned in the criminal jail of Poonah for the space of one month.

The Judicial Commissioner for the Deccan and Khandeish, in reviewing this case, on the petition of the prosecutor, considered, that the discharge of Louisa Chemin from the bar of the Session Court, on the ground of want of jurisdiction, was erroneous; and being further of opinion, that the case involved an interpretation of the Law on this point, the Judicial Commissioner submitted the following question for the consideration of the Sudder Foujdaree Adawlut:—"Does

residence alone, even as a permanent inhabitant of a cantonment, render a party amenable to Regulation XXII. of 1827?"

Bernard Peaform also petitioned the Court of Sudder Foujdaree Adawlut to annul the sentence of the Session Judge, whereupon the Court (present W. P. LeGeyt and G. Grant) passed the following resolution:—"The prisoner, Bernard Peaform, has been convicted of adultery, under Act II. of 1845. That Act only defines a punishment for persons already convicted. The offence of adultery can only be tried in the Hon'ble East India Company's Criminal Courts, when it is punishable by the religious law of the offender, under Regulation XIV. Section I. Clause 1, Para. 7. The offender in this case is a Christian, and therefore the Courts have no criminal jurisdiction in regard to this offence. The conviction and sentence are accordingly annulled." It was further ordered, that the question submitted by the Judicial Commissioner for the Deccan and Khandeish should be referred to a full Court.* On the 15th of November 1846, the Court (present A. Bell, B. Hutt, P. W. LeGeyt, and G. Grant) resolved, "that the discharge of the prisoner, Louisa Chemin, from the Session Court in this case, and her transfer to the military authorities, were erroneous, she not being one of the persons indicated by Section III. Regulation XXII. of 1827." The Court further ordered, that an Interpretation be published for general information, declaring that the Provisions of Regulation XXII. of 1827, were not applicable to all residents in camps, but to those only belonging to or connected with the Bombay Army.†

* By a Rule of Court, dated the 19th January 1846, no Interpretation or Circular Order can be passed without the concurrent voices of three Judges, and by a subsequent Rule of Court the four Puisne Judges, or the Chief Judge and three Puisne Judges, must record their opinions previously to the promulgation of any Interpretation or Circular Order.

† The opinion of the Judge Advocate General of the Bombay Army would appear, from the subjoined reply to the petition of Raphael Chemin, to have fully coincided with the interpretation of the law above declared:—

THE CASE

of

KHUNDOO WULLUD KUBBAJEE.

Charge—*Treason.*

1846.
23rd November.

The case of KHUNDOO WULLUD KUBBAJEE.

In this case the trying authority entertaining doubts whether the facts as set forth in the evidence amounted to Treason, submitted his doubts to the Court of Sudder Foujdaree Adawlut, without recording a finding against the prisoner. The Court held this proceeding to be irregular, and therefore returned the case to the trying authority to complete his record to the extent required by Cl. 2, Sec. XXII. Reg. XIII. of 1827.

The sufficiency of the evidence to warrant a finding of the facts charged must in all cases be determined by the trying authority, and on this point it is not competent to him to obtain the assistance of the Sudder Court.

This prisoner was tried for Treason, before a Special Commissioner appointed under Act V. of 1841, on an indictment charging him with having, during the year 1844 (corresponding with Shuke 1765-66), joined a gang of armed men, raised by the outlaw Raghojee Bangria, for the purpose of 'open depredation,' and among other crimes committed by the gang, with having on the 11th October 1844, resisted and fired on certain Government sepoys, in the jungle near the village Kondanee within the Zillah of Ahmednuggur.

The prisoner admitted, that he was present with the gang on the occasion set forth in the charge, but denied, that he had fired, and that fact was not proved against him at the trial.

By the Special Commissioner (W. J. Hunter):—"The evidence in this case establishes that the prisoner is guilty as follows:—First of having joined Raghojee Bangria, the outlaw, who had raised a body of armed men, and of having remained with him, as one of his armed followers, for the period of three

"To Raphael Chemin.

"The Judge Advocate General of the Army is of opinion, that simple residence, even as a permanent inhabitant of the Bazar or cantonment, does not render a person a Camp follower, within the meaning of the 153rd Article of War provided for by Act. XX. of 1845, unless he or she is in some public employment, or in the service of one belonging to the Troops; and as your wife Louisa Chemin is neither attached to, nor serving with, any part of the Army, she can by no possibility be brought within the meaning of that Article. The matter, therefore, if proceeded in, must be disposed of by the local Criminal Courts."

(Signed) STILES, Captain,
Superintendent of Bazars.

Poonah Cantonment,
1st October 1846.

Vide also the Court's Circular Order, dated 4th September 1848, explaining what offences are cognizable by military tribunals, and what by the ordinary Criminal Courts.

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The case of KHUNDOO WULLUD KUBAJEE.

months. Secondly, of having been with him when he and his followers exchanged shots with some of the police corps under Subedar Khunderow, near the village of Koondanee, Zillah Ahmednuggur, when one of Raghojee's followers was killed; but whether such offence amounts to 'open depredation,' that is, Treason, the Court is not prepared to determine." The Special Commissioner then proceeded to quote precedents in support of his doubt, and concluded by referring the case for the decision of higher authority, under the provision of Clause 2, Section XXII. of Regulation XIII. of 1827, as he was in doubt as to the application of the Law.

The Court of Sudder Foujdaree Adawlut (present B. Hutt and W. P. LeGeyt), upon a perusal of the Special Commissioner's record, "resolved to return the case to the Special Commissioner with instructions to complete the same by passing judgment as to whether the facts, on which the charge was founded, were established against the prisoner. It being thereafter open to the Special Commissioner to refer any point for the Court's consideration under the Regulation quoted."

The Special Commissioner, in resuming the consideration of this case, in compliance with the precept of the Sudder Foujdaree Adawlut, pronounced the prisoner guilty of the charge preferred, and fully convicted him thereof. But whether the prisoner had joined a body of armed men raised by the outlaw Raghojee Bangria for the *purpose of open depredation or not*, he the Special Commissioner could not determine, and therefore again referred the case to the Sudder Foujdaree Adawlut.

The case on coming before the Court, Messrs. Hutt and LeGeyt, Puisne Judges, recorded the following minutes:—

By B. Hutt, Esquire, Puisne Judge:—"The finding of the Special Commissioner in this case, now acquits the prisoner, because he does not convict him of Treason, but distinctly declares it to be uncertain, whether the band joined by the accused, at the head of which was Raghojee Bangria, was raised for the purposes of 'open depredation' or not, which at

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once is fatal to the charge, this forming the very essence of it, the joining no other but a band of armed men raised for the purpose of making war against any of the British Governments in India, or the adjacent countries, or for the purpose of 'open depredation,' rendering a person amenable to a charge of Treason. There remains then no point for this Court to determine, and so I would inform the Special Commissioner."

By P. W. LeGeyt, Esquire, Puisne Judge:—"The Special Commissioner has forwarded this case again, having recorded a conviction of the facts stated in the charge, but has recorded that he is unable to determine whether it be Treason.

"The proof is quite clear, that the prisoner was with Raghojee's band, and that while with it, that band was engaged in open depredation, insomuch, that it burned villages, and when attacked by Government troops, resisted. I have no doubt but that the case can be legally considered to be one of Treason, seeing that various other cases, of which the circumstances were exactly similar, have been determined to be so. I therefore convict the prisoner of Treason, and sentence him to death and confiscation of his property, with the usual reservation for the benefit of his family, subject to the confirmation of the Hon'ble the Governor in Council."

Additional Minute by Mr. Hutt:—"It seems to me, that it is not competent to this Court to find a verdict on which sentence is to be passed. The facts of the case must be determined by the trying authority. In the present case, the Special Commissioner distinctly records, that the prisoner is guilty of joining a body of armed men, and being with them when they exchanged shots with the Police, but he doubts whether such offence amounts to 'open depredation,' consequently he refers it for this Court to determine this fact. If the Special Commissioner doubted the fact of the band the prisoner joined being employed in 'open depredation,' he should have called evidence to satisfy himself, so as to find a clear verdict, and a deficiency here cannot, as I hold, be supplied by this Court. The design of Chapter 2, Section XXII.

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Regulation XIII. of 1827, is, according to my view of it, to provide for any unusual case, where, after finding a verdict on the facts charged, a doubt arises in regard to the application of the Law or some other matter independent of the verdict; consequently, as it stands, I hold the finding of the Special Commissioner to amount to an acquittal of the prisoner. There is a case on record, wherein Lukkria Bheel was tried for Robbery before the Nuggur Court in 1831; the Session Judge recorded his opinion, that there was no doubt of the prisoner's guilt, but as he declared the confession recorded against him to have been compulsory, the Session Judge referred the case without recording a finding; the Sudder Judges on the 8th February returned it, with the remark that the Session Judge must complete the case."

This difference of opinion brought the case before a third Judge, Mr. G. Grant, who recorded his view as follows:—

"I am of opinion that this case has been very unnecessarily referred, and under a misapprehension as to the meaning of Section XXII. Clause 2nd of Regulation XIII. of 1827, which does not contemplate that a Criminal Judge shall obtain the assistance of the Sudder Court in estimating the sufficiency of the evidence to warrant a finding of the facts laid in the charge, but only its decision on the application of the Law to facts found, or other difficulty *with reference to the sentence to be passed.* The Section provides, that the trial shall be completed, save and except the 'sentence' only; consequently the trial which the trying authority is bound to complete, embraces the finding. In the present case, a finding has been recorded by the Criminal Judge under instructions from this Court. I think the evidence recorded warranted a conviction; if the Session Judge thought otherwise, it was competent to him to take further evidence; and surely a case never existed, in which proof could have been more readily and abundantly obtained on the point on which doubt was entertained; namely, that the band which went by the name of Raghojee Bangria's was raised for, and engaged in, acts of open depredation. The fact was notorious, and a hundred witnesses might

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have been called to prove it. The facts found by the Special Commissioner, namely, that the prisoner, some time in the year 1844, joined a body of armed men raised by the outlaw Raghojee Bangria, and in the month of October of the same year while out on a *plundering* expedition with the said outlaw and his armed band, exchanged shots in the jungle of the village of Koondanee in the Ahmednuggur Zillah with certain Government sepoys of the Ahmednugger Police Corps, do not amount to Treason, even if the Special Commissioner had not declared his inability to find that the band had been raised for purposes of open depredation; consequently it appears to me, that it only remains for the Court to acquit the prisoner, or direct the Special Commissioner to acquit him."

The Court finally resolved, that as the facts found by the Special Commissioner did not amount to Treason, the prisoner was thereby entitled to an acquittal. In communicating his decision to the Special Commissioner, the Court directed him to be informed, that the prisoner's acquittal in this instance was not to bar proceedings being taken against him for any crime he may have committed not immediately involved in the present charge.

The prisoner was subsequently tried on other charges of Treason.

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1. No Civil Surgeon is to release a criminal sentenced as a lunatic from the Civil Hospital on his becoming sane, but he is to return the criminal to the authority to whom the warrant of the Sudder Foujdaree Adawlut for his custody is addressed.—Sheik Ghasee's case... 81

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1. Ruled by the Sudder Foujdaree Adawlut, that coining gold Venetians, which were not used as current coin in India, was not an offence punishable under the provisions of Section XVIII. of Regulation XIV. of 1827.—Purushram Wullud Govind Shett, and others, case of. 94

2. The mere having base coin in possession without uttering the same not a penal offence, under the provisions of Sec. XIX. of Regulation XIV. of 1827.—Sheolall Nurbheram's case..... 106

COMMUTATION OF PUNISHMENT.

1. In this case it was held by the Sudder Foujdaree Adawlut, that Clause 1, Section VII. of Regulation XIV. of 1827, did not confer upon the trying authority the power of commuting a sentence of death to imprisonment for life, such power being reserved for the superior tribunal before which the case must come for confirmation.—Mahadoo bin Kasseeba's case..... 57

2. In this case of Treason, a sentence of death passed upon one of the leading criminals, was commuted by the Hon'ble the Governor in

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Council to transportation for life, on the ground that the prisoner was a subject of the Kolapoor State, and not a British subject.—Jewun row bin Ramchunder row Ghorepuday's case..... 245

CONCEALMENT.

1. The concealment of conspiracy after the fact, not a penal offence.—The case of Ruttunjee Hurreebhace and others..... 133

2. Convictions against accessaries charged with concealment after the fact, punishable, although no conviction has been recorded against the principal.—Veergur Sumboogur and another's case..... 147

3. Two prisoners convicted of concealment of murder after the fact, and sentenced to transportation for life.—Veergur Sumboogur and another's case..... 151

4. The prisoner in this case acquitted of concealment of murder, on grounds that the body of the deceased had never been found, and that there was no proof of a murder having been committed beyond the admission of the prisoner, that one of the principals told him such was the fact.—Toteya bin Rachya's case..... 219

5. Although in certain cases convictions may be had against the persons concealing a murder, when no conviction has been recorded against the principal, yet as long as a hope can be entertained of apprehending the principal, and the Law allows it, it is preferable to postpone the arraignment of the concealers.—Toteya bin Rachya's case..... 219

CONFESSIONS.

1. The confession of an accomplice is evidence only against himself, and can in no way be made use of against another.—The case of Suntramurf Jeram bin Sidgun..... 1

2 Confessions improperly obtained not admissible in evidence.—Purthum Hurya's case..... 28

3. Ditto Ditto.—Mota Bhaosing's case..... 30

4. Ditto Ditto.—Kusla Jeejee's case..... 191

5. Although confessions improperly obtained are not admissible in evidence, yet any facts or testimony which may be brought to light and obtained in consequence of such confessions, may be received in evi-

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dence. Six prisoners convicted in this case on evidence of this nature.—Kusla Jeejee and others' case..... 191

6. Ditto Ditto.—Purthum Hurya's case..... 28

7. A prisoner on his trial for highway robbery made a free and voluntary confession, but urged that eighteen months previously a confession had been extorted from him by maltreatment; held by the Sudder Foujdaree Adawlut, that his subsequent confession was not invalidated by the maltreatment he had sustained eighteen months previously. The prisoner was accordingly sentenced to five years' imprisonment with labour.—Lukkria Wullud Jakkojee Bheel's case.. 57

8. It was ruled in this case, that a Roman Catholic Priest could not be compelled, under Cl. 4, Sec. XXXVI. Regulation XIII. of 1827, to make disclosures of death-bed confessions, communicated to him in his priestly capacity of confessor.—The case of Alice Fernanda and others..... 99

9. The confession of one prisoner is not evidence against another.—Bajee's case..... 129

10. Confessions of prisoners to be taken down in their own words, and not to be dictated.—Pooujea Wullud Lalloo and others, case of..... 222

11. In this case, two accessaries to murder, in their confessions, which were the only evidence against them, admitted their guilty knowledge before as well as after the fact, but urged, that they were deterred from disclosing that knowledge by fear of personal violence from the principal. Held by the Sudder Foujdaree Adawlut, that this circumstance did qualify their confessions, and therefore must be admitted as an extenuation of their guilt, the law requiring confessions to be taken strictly as a whole. Mitigated sentences were accordingly passed.—Moobaruck wullud Oomer Seedee and others, case of..... 234

Conspiracy.

1. The concealment of conspiracy after the fact, not a penal offence.—Ruttunjee Hurreebhaee and others, case of..... 133

2. Three persons who were empanelled as members of an inquest held on the body of one Teja, who had been murdered, purposely returned a false verdict, stating that the deceased had committed suicide: these three persons with a fourth, who drew out and wrote the inquest report knowing it to be false, were indicted for conspiracy, and being convicted were severally sentenced to two years' imprisonment with hard labor.—Fakeera Wullud Jeewun and others, case of..... 203

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CRIPPLES.

A sentence of death and confiscation of property passed on the prisoner in this case, on conviction of Treason, was mitigated at the recommendation of the Sudder Foujdaree Adawlut, by the Honorable the Governor in Council, to a term of ten years' imprisonment, on the ground of the prisoner's having been so severely wounded at the time of his apprehension as to render him a cripple.—Hurree bin Baboo's case. 251

CULPABLE HOMICIDE.

1. In this case the Sudder Foujdaree Adawlut was of opinion, that the finding of the Judge on Circuit should have been Culpable Homicide instead of Murder. On a doubt arising whether the Court had power to alter such finding it was declared, that the Sudder Foujdaree Adawlut had the power to alter such finding, when the offence brought in, being of the same nature, was of a less degree than that set out in the original charge.—Nagojee Gaodjee's case..... 26

2. In this case the prisoner was convicted of Murder by the Session Judge, and sentenced to transportation for life, on evidence shewing no premeditation, but that the deed was the result of passion on sudden provocation. Held by the Sudder Foujdaree Adawlut, that the prisoner was only guilty of Culpable Homicide, and sentence reduced to ten years' imprisonment with hard labour.—Howliah bin Pursapa's case..... 60

3. The prisoner killed with a sword a thief he found at night stealing his chillees, in a field.—Held by the Sudder Foujdaree Adawlut, that this was not a case of Justifiable Homicide, but of Culpable Homicide; it being proved, that the prisoner's own life was not in danger, that the deceased offered no resistance, and did not even attempt to escape, and that the prisoner might have apprehended the deceased without resorting to extreme means, which the circumstances of the case did not warrant.—Luxumappa bin Appana's case..... 211

4. In a case of Murder or Culpable Homicide where death ensued 180 days after the wounding, it was ruled by the Sudder Foujdaree Adawlut, that the prisoner was liable to punishment by the Regulations, as death had taken place within six English Calendar Months after the assault.—Hussan Nuthoo and another's case..... 254

DEFINITIONS.

For the definitions of an attempt, *vide* ATTEMPTS, Nos. 1 and 2.

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DESERTION OF A CHILD.

The desertion of a child by its mother, does not amount to murder, nor even an attempt to murder, unless the circumstances attending the desertion shew that it is done with the intention of causing its death.—Gunga's case..... 125

DRUNKENNESS.

The prisoner, while in a state of intoxication, stabbed to death a person who interfered in a dispute between his father and the prisoner. Held that the prisoner was guilty of murder, and that his plea of drunkenness was no excuse for the crime committed. Sentence, transportation for life.—Oushea wd. Sawia Bheel's case..... 81

DYING DECLARATIONS.

1. The dying declaration of a person, if duly attested, is admissible as evidence, although not taken in the presence of the prisoner.—Wittoo wd. Bappoo's case..... 141

2. Three prisoners convicted of murder, and sentenced to transportation for life, upon the dying declaration of the deceased, given on solemn affirmation before constituted authority.—Appa wullud Ballajee and others, case of..... 174

3. The prisoner convicted of murder on the positive recognizition of the deceased, as stated in his deposition made shortly before death, corroborated by other circumstantial evidence.—Ambia Bin Kan Matra's case..... 193

ESCAPES FROM CUSTODY.

1. Trials for Escapes from Custody are not to be held before Assistant Session Judges or Magistrates.—Lalla Antaram's case..... 93

2. Wilfully permitting an escape from custody is punishable under Sec. III. of Regulation V. of 1831. But if the escape be occasioned by carelessness or neglect of duty, the officer is only amenable to Sec.

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VIII. of Regulation XII. of 1827, for misconduct.—The case of Tulwar Dóorgah and others..... 137.

3. The prisoners, in this case, having been liberated from legal custody by some rebels who attacked the town of Chickodee, made their escape. On being again apprehended, they were tried for escaping from custody, convicted, and sentenced by the Session Judge to one year's imprisonment without labor, which sentence was in consideration of the circumstances of the case mitigated by the Sudder Foujdaree Adawlut to one month's imprisonment.—Ramba and others, case of..... 229

EUROPEANS.

Vide ACT OF PARLIAMENT, No. 1.

EVIDENCE.

1. The confession of an accomplice is evidence only against himself, and can in no way be made use of against another.—Suntram urf Jeram bin Sidgun, case of..... 1

2 The possession of stolen property by a prisoner at a period four years after a robbery, not presumptive evidence of his having committed the robbery. The prisoner acquitted on these grounds.—Suntram urf Jeram bin Sidgun, case of..... 1

3. The evidence necessary to support an indictment for Rape.—Hussha Wullud Yeshnack's case, Note to..... 14

4. Confessions improperly obtained not admissible in evidence.—Purthum Hurya's case..... 28

5. Ditto ditto.—Mota Bhaosing's case..... 30

6. Ditto ditto.—Kusla Jeejee's case..... 191

7. The prisoner in this case, convicted of murder, entirely on circumstantial evidence. The Court confirmed the conviction, but reduced the sentence of death to imprisonment for life.—Jalum Ramsing's case..... 107

8. The dying declaration of a person, if duly attested, is admissible as evidence, although not taken in the presence of the prisoner.—Wittoo wullud Bappoo's case..... 141

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9. Ruled, that if the evidence of an accomplice be satisfactorily corroborated in regard to some of the prisoners, his testimony may be acted upon with respect to other prisoners, although as far as it affects them, it may have received no confirmation.—Babjia and others, case of.... 156

10. Three prisoners convicted of murder and sentenced to transportation for life, upon the dying declaration of the deceased, given on solemn affirmation before constituted authority.—Appa wullud Ballajee and others, case of 174

11. The failure on the part of the prisoner to prove an alibi is evidence for the prosecution.—Shewpooree Kullianpooree's case..... 178

12. The prisoner in this case convicted of murder upon circumstantial evidence, and upon the contradictions apparent in his own statements, which clearly proved his defence to be false. Sentence, transportation for life.—Haja Teja's case..... 182

13. Although confessions improperly obtained are not admissible in evidence, yet any facts or testimony which may be brought to light and obtained in consequence of such confessions may be received in evidence. Six prisoners convicted in this case on evidence of this nature.—Kusla Jeejee and others, case of..... 191

14. Ditto ditto.—Purthum Hurya's case..... 28

15. The prisoner convicted of murder on the positive recognizition of the deceased as stated in his deposition made shortly before death, corroborated by other circumstantial evidence.—Ambia bin Kan Matra's case..... 193

16. The deposition of the murdered man taken by competent authority shortly before death, and proved by two or more witnesses, is admissible evidence, even if taken in the absence of the accused.—Ambia bin Kan Matra's case..... 193

17. The prisoner in this case was convicted of murder on evidence which proved that he was last seen with the deceased, dragging him along by the hair with a drawn sword in his hand; that about ten days afterwards a skeleton was found in the direction the prisoner was seen dragging the deceased, with the scull severed from the body, and some articles of wearing apparel were also found near the skeleton, which were identified as the property of the deceased; that the prisoner had absconded, and his mistress deposed, that he admitted to her that he had killed the deceased. Sentence, transportation for life.—Bappia wullud Rowjee's case..... 197

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18. Rules for admitting presumptive evidence.—Vide Toteya bin Rachya's case, Note to 221

19. The mode of procedure to be adopted in rendering the deposition of a defunct witness legal evidence, shewn.—Puddoo bin Bappoojee Nermul's case 231

20. In a case where four prisoners were tried for Treason, three were convicted on the clear and positive testimony of two pardoned accomplices, supported by other corroborative evidence, and the admissions of the three prisoners themselves; and it was held in regard to the fourth, who denied the charge, that since the truth of the evidence of the accomplices had been unequivocally established with respect to the other three prisoners, its veracity might be justly presumed against the fourth, who was accordingly convicted and sentenced to death.—Bhowkeng and three others, case of. 240

21. Warrants in execution of former convictions not to be brought forward as evidence for the prosecution, but after conviction due weight to be given to them in awarding punishment.—Hur Patell bin Chind Patell's case. 255

Executions.

1. The prisoner, a woman of the Kamatee caste, was tried for murdering a child, under circumstances of great atrocity; and, on conviction, was sentenced to death: the Court of Sudder Foujdaree Adawlut holding, that the prisoner was not entitled to the benefit of Cl. 5, Sec. IV. of Regulation XIV. of 1827.—The case of Luxumee, wife of Juggunauth. 87

2. The execution of a woman when pregnant is to be delayed for forty days after delivery.—Mukowa's case..... 113

3. The prisoner convicted of the murder of Amrutrow Hurree Bhutt, Jemadar of the Ghat Police, and sentenced to be executed, for the sake of example, at the place where the murder was committed.—Puddoo bin Bappoojee Neermul's case. 231

4. Held by the Sudder Foujdaree Adawlut, that a sentence of death having been passed by a Session Judge, the directing the execution to be carried into effect with the additional marks of public disgrace, specified in Clauses 2, 3, and 4, Sec. IV. Reg. XIV. of 1827, was no enhancement of the punishment, and therefore might be added at the discretion of the Sudder Court.—The case of Gunnah Pyah and others. This rule is however superseded by Act II. of 1849, which abolishes public disgrace as a punishment... 50

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False Personation.

1. The prisoner personating a friend, gave evidence before a Session Court under his friend's name. Held that the prisoner was properly convicted of Perjury, though the circumstances which he falsely deposed to have seen, in fact took place.—Luxiah bin Budiah's case.... 116

2. In this case the prisoner, personating his brother, swore to the truth of a petition signed by him in his brother's name. Held by the Sudder Foujdaree Adawlut, that this offence involved both Perjury and Forgery, and that the sentence passed by the Session Judge on a conviction for Perjury was correct.—Sopannah bin Kallajee, case of.... 145

Finding.

1. It is not competent to a Session Judge to submit a case to the Sudder Foujdaree Adawlut under the provisions of Regulation XIII. Sec. XXII. Cl. 2, of 1827, without recording a clear finding against the prisoner.—Lukkria wd. Jakkajee's case..... 55

2. The sufficiency of the evidence to warrant a finding of the facts charged, must in all cases be determined by the trying authority, and on this point it is not competent to him to obtain the assistance of the Sudder Court.—Khundoo wd. Kubbajee's case..... 268

Foreign Money.

Vide Coining, No. 1.

Foreign Powers, Jurisdiction of.

1. The prisoners in this case were charged with three gang robberies—the first and second committed within the territory of the Honorable East India Company, and the third within that of His Highness the Guickwar. On apprehension they were tried and convicted on the first and second charges by the Judge of Surat, and sentenced to five years' imprisonment, and at the expiration of that period they were ordered to be delivered over to the authorities of His Highness the Guickwar, when one of the prisoners claiming to be a British subject, under Section V. of Regulation XI. of 1827, it was held by the Sudder Foujdaree Adawlut, that the *onus probandi* in the case rested with the prisoner.—Bappooreea Bhugwan and another, case of..... 213

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2. This prisoner, who committed a murder in a village belonging to the Nepannee Jaghire before it lapsed to the British Government, and who was apprehended and brought to trial after its annexation, was acquitted, on the ground of want of jurisdiction, under the provisions of Article 2, Cl. 2, Section III. of Regulation XI. of 1827.—Rama bin Burmappa's case. 215

3. The prisoner, a subject of His Highness the Rajah of Sattara, was charged before the Session Judge of Sholapoor, with receiving stolen goods at Akulkote, a town belonging to His Highness, the goods having been stolen within the Honorable East India Company's Territories. Held by the Sudder Foujdaree Adawlut, that the prisoner under these circumstances was exempt from the Court's jurisdiction, and must therefore be acquitted.—Nimbia Wullud Roodranack's case. .. 227

Forgery.

1. Individuals falsifying their books of accounts, and producing them as evidence in a Court of Justice with a fraudulent intent, held by the Sudder Foujdaree Adawlut to have committed Forgery as defined in Clause 1, Section XVII. Regulation XIV. of 1827. Vide Interpretation on this Regulation.—Dajee Wullud Yemajee and another, case of. 121

2. Ruled, that a person passing separate deeds of sale of the same property to two different parties, and thus obtaining money upon both, was not guilty of forgery as defined in Clause 1, Section XVII. Regulation XIV. of 1827.—Ragoo Baleristna's case. 151

3. On a question, whether a charge of Forgery could be sustained on a deed which had ceased to be of any value, by being superseded by another deed of later date, specifically cancelling all to which the former one referred, it was held by the Sudder Foujdaree Adawlut, that as the former deed had been falsely altered, and applied to a fraudulent purpose, the Forgery was complete.—Pandoorung Vittul and another, case of..... 171

Vide Practice, No. 3; Sentence, No. 4.

Full Penal Powers.

1. It was ruled by the Sudder Foujdaree Adawlut, that an Assistant Magistrate in charge of a Zillah was authorized to exercise the full penal powers of a Magistrate.—Gokul Bhawa, and eight others, case of.... 91

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2. All Assistant Magistrates upon whom the full penal powers of a Magistrate have been conferred, under Act XIV. of 1835, are still under the control of the Zillah Magistrate, who possesses the power of reviewing the decisions, and mitigating or annulling the sentences, of all his Assistants.—Ramajee bin Kannappa, case of. 225

Gang Robberies.

The prevalence of Gang Robberies within any particular district held to be a circumstance of aggravation, and a matter deserving of weight in passing sentence.—Babjia and others, case of..... 156

Halees or Bond Slaves.

Halees or bond slaves, how punished for misconduct.—*Vide* Interpretations, No. 2.

Highway Robbery.

Five prisoners having been tried and convicted on a charge of Highway Robbery perpetrated on three Wanees, two of whom they afterwards murdered under circumstances of great deliberation and cruelty, were one and all sentenced to death.—The case of Jehan Khan and others. 76

Vide Confessions, No. 4.

Husband and Wife.

A Hindoo husband cannot be convicted of robbing his wife, the wife according to Hindoo Law being completely under the controul of her husband; but a dispute between them regarding their property should be determined by a Civil Action.—Ootmaram Atmaram and others, case of..... 259

Imprisonment.

1. Imprisonment cannot be adjudged for a longer period than fourteen years, except that ordinary imprisonment for life may be substituted

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as a commutation for a sentence of death by the Sudder Foujdaree Adawlut, and then by Act XIV. of 1844 the convict may be transported for life.—Dowlutta's case..... 64

2. It was held to be illegal to award a sentence of imprisonment for life otherwise than as a commutation for a sentence of death. Such sentence not coming within the provisions of Section III. of Regulation XIV. of 1827, whereby it is declared that imprisonment shall be in conformity to Section VII. of that Regulation, which only admits of imprisonment for a term of fourteen years.—Dowlutta's case..... 65

Vide SENTENCE, No. 5; SOLITARY IMPRISONMENT, No. 1.

INFANTICIDE.

The prisoners, Chimee and Bhemee, were charged with Infanticide, and Jewanya as an accessary with instigating. It was proved, that Chimee gave birth to an illegitimate child, which at the instigation and advice of Jewanya, the father of the child, was murdered by the prisoner Bhemee in Chimee's presence. The prisoners Jewanya and Bhemee were sentenced to transportation for life, as being the most culpable, and Chimee to two years' imprisonment, in consideration of her youth, 15 years of age, and also of the influence exercised over her by Jewanya, a Bhuggut or reputed wizard, and by Bhemee, her mother.—Chimee and others, case of..... 279

Vide CHILD MURDER; SENTENCE, No. 2.

INQUEST.

Three persons, who were empanelled as members of an inquest held on the body of one Teja, who had been murdered, purposely returned a a false verdict, stating, that the deceased had committed suicide. These three persons with a fourth, who drew out and wrote the inquest report, knowing it to be false, were indicted for Conspiracy, and being convicted were severally sentenced to two years' imprisonment with hard labor.—Fakeera Wullud Jeewun and others, case of.. 203

INSANITY.

1. The prisoner was charged with murder, and convicted before the Criminal Judge, but it appearing that at the time of the commission

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of the offence the prisoner was insane, sentence was stayed, and a reference made to the Superior Court for instructions. Held by the Sudder Foujdaree Adawlut, that this procedure was erroneous, as the prisoner was entitled to an acquittal on the ground of the proof of insanity. The Court accordingly acquitted the prisoner, but directed his detention until the Civil Surgeon should certify that he had become sane.—Oomer Wullud Auwad's case..... 23

2. In this case a rule was laid down for the disposal of prisoners convicted of criminal offences, while under the influence of insanity.—Sheik Ghasee Wullud Sheik Boolla's case..... 79

3. No medical officer is to release a criminal, sentenced as a lunatic, from the Civil Hospital on his becoming sane; but he is to return the criminal to the authority to whom the warrant of the Sudder Foujdaree Adawlut for his custody is addressed.—Sheik Ghasee Wullud Sheik Boolla's case..... 18

4. In all criminal cases where prisoners show indications of insanity either at or after trial, it is essential to enquire into the state of the prisoner's mind at the time of the commission of the offence laid to his charge.—Hoozoorshah Wullud Muzarallashah's case..... 111

INSTIGATION.

1. In this case the Court of Sudder Foujdaree Adawlut found, that no attempt or act followed the expressed intention of the prisoner to instigate robbery, and therefore acquitted and discharged him.—Myputtee Waknack's case..... 119

2. Convictions of instigating punishable, although no conviction has been recorded against the principal.—Puddee's case..... 218

INTENTION.

1. The mere intention to commit a crime does not constitute an attempt—an attempt must be attended by some overt act.—Crustna's case..... 103

2. In this case the Court of Sudder Foujdaree Adawlut found, that no attempt or act followed the expressed intention of the prisoner to instigate robbery, and therefore acquitted and discharged him.—Myputtee Waknack's case..... 119

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INTERMARRIAGE, RIGHT OF.

In this case a girl of fifteen years of age, born of a Portuguese mistress kept by a Parsee, was about to marry a Parsee, with the consent of her parents, when a Roman Catholic Priest petitioned the Session Judge to prevent the marriage, and claimed the guardianship of the girl, until she arrived at a more mature age, on the grounds of the girl having been baptized. It was held by the Sudder Foujdaree Adawlut, with the advice of the Advocate General, that the girl having attained womanhood was entitled to marry whom she pleased, and that she should also be allowed to reside with her parents if she wished so to do.—The case of Marianne Pepin and another..... 72

INTERPRETATIONS.

1. In this case the Sudder Foujdaree Adawlut were of opinion, that the finding of the Judge on Circuit should have been Culpable Homicide instead of Murder. On a doubt whether the Court had the power to alter such finding, it was declared, that the Sudder Foujdaree Adawlut had the power to alter such finding, when the offence brought in, being of the same nature, was of a less degree than that set out in the original charge.—Nagojee Gaodjee's case..... 26

2. Halees or bond slaves, who leave their masters' service, are only subject to punishment as ordinary servants in the manner laid down in Clause 3, Section XVIII. of Regulation XII. of 1827.—The case of HURRYA and two others..... 51

3. All trials before Session Judges are to be conducted agreeably to the forms prescribed for Courts of Circuit in Chapter III. of Regulation XIII. of 1827.—The case of Wittoojee Rugshette and 13 others..... 52

4. It was declared by the Sudder Foujdaree Adawlut, that an Assistant Magistrate in charge of a Zillah was authorized to exercise the full penal powers of a Magistrate.—Gokul Bhawa and others, case of.... 91

5. It was declared by the Sudder Foujdaree Adawlut, that when the Honorable the Governor in Council once commutes a sentence of death into imprisonment for life, it is not competent for him, on any grounds, to revert to the original sentence.—Mukowa's case..... 113

6. In this case the Court of Sudder Foujdaree Adawlut found, that no attempt or act followed the expressed intention of the prisoner to instigate robbery, and therefore acquitted and discharged him.—Myputtee Waknack's case..... 119

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7. Wilfully permitting an escape from custody is punishable under Section III. of Regulation V. of 1831; but if the escape be occasioned by carelessness or neglect of duty, the officer is only amenable to Section VIII. of Regulation XII. of 1827, for misconduct.—Tulwar Doorgah and others, case of. 137

8. In this case it was declared, that the provisions of Act XI. of 1840 do not authorize a sentence of solitary imprisonment uncombined with imprisonment with hard labor, in cases where the punishment of solitary imprisonment is not prescribed by the General Regulations for the offence committed.—Gunnoo bin Mahadoo's case. 153

9. All Assistant Magistrates upon whom the full penal powers of a Magistrate have been conferred under Act XIV. of 1835, are still under the control of the Zillah Magistrate, who possesses the power of reviewing the decisions, and mitigating or annulling the sentences, of all his Assistants.—Ramajee bin Kannappa's case..... 225

10. In this case, where two prisoners were charged with aiding a Mahalkurry in the abuse of his official authority, by torturing a person to extort a confession, an objection was taken on their behalf, that such aiding was not punishable under the Interpretation on Clause 5, Section I. of Regulation XIV. of 1827, dated 16th October 1839. Held by the Sudder Foujdaree Adawlut, that the Interpretation cited was limited to offences against the Revenue Regulations, and did not extend to other criminal acts.—Trimbuck Khrishn and others, case of. 256

11. The Provisions of Regulation XXII. of 1827 are not applicable to all residents in Military Camps, but to those only belonging to or connected with the Bombay Army.—Bernard Peaform's case..... 266

JHANSA.

A prisoner tried and convicted in five separate instances of having committed the crime of Jhansa, was punished with five years' imprisonment with labor.—Narron Nuthoo's case..... 21

JURISDICTION.

1. A prisoner, who had been sentenced by the Political Agent at Sawunt Warree, under the orders of the Honorable the Governor in Council

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of Bombay, to be transported for life, returned from transportation without a pardon, and upon being apprehended, he was tried by the Session Judge of the Konkun, and again sentenced to be transported. Held by the Sudder Foujdaree Adawlut, that this latter sentence was illegal, the Session Court never having had jurisdiction in the matter, and the authority by whom the original sentence was passed not being recognized in the Code of Regulations.—Gharroo bin Dewjee's case.... 139

2. This prisoner, who committed a murder in a village belonging to the Nepannee Jaghire before it lapsed to the British Government, and who was apprehended and brought to trial after its annexation, was acquitted on the ground of want of jurisdiction, under the provisions of Article 2, Clause 2, Section III. of Regulation XI. of 1827.—Rama bin Burmappa's case.... 215

3. The prisoner, a subject of His Highness the Rajah of Sattara, was charged before the Session Judge of Sholapoor with receiving stolen goods at Akulkote, a town belonging to His Highness, the goods having been stolen within the Honorable East India Company's Territories. Held by the Sudder Foujdaree Adawlut, that the prisoner under these circumstances was exempt from the Court's jurisdiction, and must therefore be acquitted.—Nimbia Wullud Roodranack's case.... 328

Justice of the Peace.

1. The Magistrate of the Zillah or District, being also a Justice of the Peace, can alone determine or convict upon complaints against European British subjects, to the extent specified in the 53rd of George III. Chapter 155, Section 105.—Edward Verling's case.... 145

Justifiable Homicide.

Vide Culpable Homicide, No. 3.

Kidnapping.

Three prisoners being convicted of stealing a female child, two were sentenced to three years' imprisonment with hard labor, and the third under mitigating circumstances (age and infirmity) to one year of ordinary imprisonment.—The case of Luximon bin Ballajee, and others. 35

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KILLING THIEVES.

The prisoner killed with a sword a thief he found at night stealing his chillees in a field. Held by the Sudder Foujdaree Adawlut, that this was not a case of Justifiable Homicide, but of Culpable Homicide; it being proved, that the prisoner's own life was not in danger, that the deceased offered no resistance, and did not even attempt to escape, and that the prisoner might have apprehended the deceased without resorting to extreme means, which the circumstances of the case did not warrant.—Luxmappa bin Appana's case 211

LUNATICS.

1. No Medical Officer is to release a criminal sentenced as a lunatic from the Civil Hospital on his becoming sane, but he is to return the criminal to the authority to whom the warrant of the Sudder Foujdaree Adawlut for his custody is addressed.—Sheik Ghasee's case 81

2. *Vide* INSANITY, Nos. 1, 2, and 3.—Act IV. of 1849.

MAGISTRATES.

1. It was ruled by the Sudder Foujdaree Adawlut, that an Assistant Magistrate in charge of a Zillah was authorized to exercise the full penal powers of a Magistrate.—Gokul Bhawa's case 19

2. The Magistrate of a Zillah or District, being also a Justice of the Peace, can alone determine or convict upon complaints against European British subjects to the extent specified in the 53rd of George III. Chapter 155, Section 105.—Edward Verling's case 145

3. All Assistant Magistrates upon whom the full penal powers of a Magistrate have been conferred, under Act XIV. of 1835, are still under the control of the Zillah Magistrate, who possesses the power of reviewing the decisions, and mitigating or annulling the sentences, of all his Assistants.—Ramajee bin Kanappa's case 225

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MILITARY CAMPS.

1. The provisions of Regulation XXII. of 1827, are not applicable to all residents in Military Camps, but to those only belonging to or connected with the Bombay Army.—Bernard Peaform's case..... 266

2. Rules regarding offences committed in Military Camps, *Vide* Note to Bernard Peaform's case..... 268

MITIGATION.

1. The prisoner convicted of an attempt to poison her husband, and sentenced by the Session Judge to suffer ten years' imprisonment, which sentence was in consideration of her age, sixteen years, mitigated by the Sudder Foujdaree Adawlut to eighteen months' solitary imprisonment.—Fatima's case..... 37

2. Youth taken into consideration as a mitigating circumstance in awarding punishment.—Kumlee Wullud Hybuttee's case..... 44

3. Ditto ditto, the case of Ramjee Wullud Roopya and another..... 201

4. Ditto ditto, Chimee's case..... 206

5. Ditto ditto, Suntoo's case..... 262

6. Age and infirmity taken into consideration as a mitigating circumstance in awarding punishment.—Lohanoo Tamboor's case..... 7

7. Ditto ditto, Luximon Ballajee's case..... 35

8. This prisoner was convicted of two gang robberies, one committed twelve, and the other five years previously to the trial, but having since lived a reformed life, and become a peaceable cultivator of the soil, and carried a good character among his fellow villagers, he was only sentenced, by the Sudder Foujdaree Adawlut, to be imprisoned for the nominal period of one day, and to furnish security.—Oomajeerow bin Donedabarow's case..... 85

9. In this case the prisoner was convicted by the Session Judge of a serious assault, and sentenced to suffer fourteen years' imprisonment with labour. Held by the Sudder Foujdaree Adawlut, that the fact of the prisoner being at the time he committed the assault under illegal restraint was a circumstance of extenuation. Sentence accordingly mitigated to four years' imprisonment without labor.—Saccaram wd. Ramchunder's case..... 135

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10. A sentence of death and confiscation of property passed on the prisoner, in this case, on conviction of Treason, was mitigated, at the recommendation of the Sudder Foujdaree Adawlut, by the Hon'ble the Governor in Council, to a term of ten years' imprisonment, on the ground of the prisoner's having been so severely wounded at the time of his apprehension as to render him a cripple.—Hurree bin Baboo's case..... 251

11. The prisoner convicted of Perjury, but in consideration of the relationship (daughter-in-law and father-in-law) existing between the prisoner and the party against whom she was called upon to give evidence, the Sudder Foujdaree Adawlut mitigated a sentence of two years' imprisonment passed by the Session Judge to one month.—Zeemee's case..... 252

MURDER.

1. A the paramour of B, in order to get rid of C the husband of B, resolved with the consent and advice of B, to murder C, and for this purpose A about dusk waylays C, but one D happening to pass along the road, A mistakes D for C and kills him. A is tried for the murder of D and sentenced to death. Held by the Sudder Foujdaree Adawlut, that this conviction was good in Law. B the wife of C being charged as an accessary before the fact with instigating the murder of D, was sentenced to be imprisoned for life. Held by the Sudder Foujdaree Adawlut, that B was not an accessary before the fact to the murder of D, of which she had no foreknowledge, and that the defect not being one of form, the prisoner B must be acquitted.—The case of Govinda bin Ballajee and another..... 9

2. The prisoner convicted of murdering a Gosaen while in the act of adultery with his wife, and sentenced to death; but on recommendation to mercy by the Session Judge, the prisoner was finally acquitted by the Sudder Foujdaree Adawlut, on the grounds of the extreme provocation given.—Puthoo Jora's case..... 95

3. The prisoner, a Brahmin, convicted of murdering a Brahmin under circumstances of great atrocity, and sentenced to death.—Mahaishwur Bhanjee's case..... 97

4. The prisoner, in this case, convicted of murder entirely on circumstantial evidence. The Court confirmed the conviction, but reduced the sentence of death to imprisonment for life.—Jalum Ramsing's case..... 107

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5. The desertion of a child by its mother, does not amount to murder, nor even an attempt to murder, unless the circumstances attending the desertion shew that it is done with the intention of causing its death.—Gunga's case..... 125

6. The female prisoner convicted of the murder of her husband, on the violent presumptions of the case. It being proved, that she was found alone in her house with the corpse of her husband, on the morning of the 26th of September 1838; that the house had only one door, which was fastened inside, and the wounds on the body of the deceased were of such a nature, that they could not have been self-inflicted. Sentence, imprisonment for life.—Bajee's case..... 128

7. In this case the prisoners Sultan Dullah and Rugah Sultan supposing one Koobèr had stolen their calf, accused him of the theft, and demanded restitution; a quarrel ensued, and Sultan Dullah struck Koobèr a slight blow on the head with the hilt of his sheathed sword; the next moment Rugah Sultan drew his sword, and mortally wounded Koobèr. Held by the Sudder Foujdaree Adawlut, that the conviction of Rugah Sultan for murder was correct, but that Sultan Dullah was guilty only of a common assault. Rugah Sultan sentenced to transportation for life, and Sultan Dullah to six months' imprisonment.—Sultan Dullah and others, case of..... 131

8. Held by the Sudder Foujdaree Adawlut, that it was very desirable to complete a case of murder without any adjournment during the trial, unless to obtain time for consideration before passing sentence.—Eera bin Chemapa's case..... 170

9. Three prisoners convicted of murder, and sentenced to transportation for life, upon the dying declaration of the deceased given on solemn affirmation before constituted authority.—Appa Wullud Ballajee's case..... 174

10. The prisoner in this case, who was convicted of killing another at his own request, was held guilty of murder, and deserving of punishment only short of death.—Myputsing bin Heerasing's case.. 188

11. The prisoner convicted of murder on the positive recognition of the deceased, as stated in his deposition made shortly before death, corroborated by other circumstantial evidence.—Ambia bin Kan Matra's case..... 193

12. In this case the prisoner was acquitted of concealment of murder, on the grounds that the body of the deceased had never been found, and

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that there was no proof of a murder having been committed, beyond the admission of the prisoner, that one of the principals told him such was the fact.—Toteya bin Rachya's case..... 219

13. A gang of men armed with clubs set out at night to rob a house, and in the prosecution thereof, they murdered a Suwar, in order to prevent alarm being given. There was no previous intention to take life, plunder being the evident object of the gang. Held by the Sudder Foujdaree Adawlut, that they were all guilty of murder. Sentence of death passed upon the leader of the gang, and of transportation for life on the rest.—Poonjea Wullud Lalloo's case..... 222

14. The prisoner convicted of the murder of Amrutrow Hurree Bhutt, Jemadar of the Ghaut Police, and sentenced, for the sake of example, to be executed at the place where the murder was committed.—Puddoo bin Bappoojee, Neermul's case..... 231

15 In a case of Murder, or Culpable Homicide, where death ensued 180 days after the wounding, it was ruled by the Sudder Foujdaree Adawlut, that the prisoner was liable to punishment by the Regulations, as death had taken place within six English Calendar months after the assault.—Hussan Nuthoo's case..... 254

16. In this case, two prisoners, in the prosecution of a robbery, inflicted a wound on a third party, which rendered a surgical operation necessary, and consequent upon that operation the patient died. Ruled by the Sudder Foujdaree Adawlut, that this was murder.—Suntoo Wullud Hybutrao's case..... 262

Vide CIRCUMSTANTIAL EVIDENCE, Nos. 1, 2, & 3; CULPABLE HOMICIDE, Nos. 1, 2, & 3; DRUNKENNESS, No. 16; EVIDENCE, No. 16; INSANITY, Nos. 1 & 2; SORCERY—WITCHCRAFT, Nos. 1, 2, & 3; THUGGEE, No. 1.

NATIVE LAW OFFICERS.

1. It is irregular for a Session Judge to refer a case to a Native Law Officer for a formal opinion on the weight of the evidence; Section VIII. of Regulation VIII. of 1831, merely contemplating, that the Court

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should avail itself of the Law Officer's opinion upon an isolated point of law or custom, The peculiar functions of the Law Officers being to expound the Law.—Moodka bin Murribussappa's case..... 83

Whenever it may be necessary to obtain the opinion of a Native Law Officer on any point of law or custom, a clear question, setting forth every thing that may be requisite for his guidance, is all that should be referred for his exposition.—Moodka's case..... 85

Neglect of Duty.

Wilfully permitting an escape from custody is punishable under Section III. of Regulation V. of 1831; but if the escape be occasioned by carelessness or neglect of duty, the Officer is only amenable to Section VIII. of Regulation XII. of 1827, for misconduct.—Tulwar Doorgah and others, case of..... 137

Pardon.

Vide Promises, Nos. 1 & 2.

Parsee and Portuguese, Intermarriage of.

In this case a girl of fifteen years of age, born of a Portuguese mistress kept by a Parsee, was about to marry a Parsee with the consent of her parents, when a Roman Catholic Priest petitioned the Session Judge to prevent the marriage, and claimed the guardianship of the girl, until she arrived at a more mature age, on the ground of the girl having been baptized. It was held by the Sudder Foujdaree Adawlut, with the advice of the Advocate General, that the girl having attained womanhood, was entitled to marry whom she pleased, and that she should also be allowed to reside with her parents, if she wished so to do.—Marianne Pepin's case..... 72

Parents, Right of, over their Children.

Vide Intermarrying, Right of.—Marianne Pepin's case..... 72
Vide Note at..... 73

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PERJURY.

1. The prisoner was charged with perjury in making two different and contradictory depositions, the one before the Magistrate and the other before the Session Judge. Proof was given that the former was true, and the latter wilfully false, and that the matter of the true deposition was material to the conviction of an offender for robbery; and thereon the prisoner was sentenced to be publicly disgraced, and to be imprisoned for three years with labor.—Moosabhaee Wullud Essabhaee's case..... 61

2. Although the Code of Regulations of 1827 does not explicitly require that perjured evidence shall be material to any matter in issue, yet it is desirable to state on the record the nature of the proceedings in which the perjury was committed, and by what authority the false evidence was taken, and how far it was likely to affect the matter in issue.—Pulsoo bin Shabajee's case..... 78

3. The prisoner personating a friend, gave evidence before a Session Court under his friend's name. Held that the prisoner was properly convicted of Perjury, though the circumstances which he falsley deposed to have seen, in fact took place.—Luxiah bin Budiah's case.... 116

4. In this case the prisoner, personating his brother, swore to the truth of a petition signed by him in his brother's name. Held by the Sudder Foujdaree Adawlut, that this offence involved both Perjury and Forgery, and that the sentence passed by the Session Judge on a conviction for Perjury was correct.—Sopannah bin Kallajee's case..... 144

5. The prisoner convicted of Perjury, but in consideration of the relationship (daughter-in-law and father-in-law) existing between the prisoner and the party against whom she was called upon to give evidence, the Sudder Foujdaree Adawlut mitigated a sentence of two years' imprisonment passed by the Session Judge to one month.—Zeemee Ayal Rama's case..... 252

POISONING.

1. The prisoner convicted of an attempt to poison her husband, and sentenced by the Session Judge to suffer ten years' imprisonment, which sentence was, in consideration of her age, sixteen years, mitigated by the Sudder Foujdaree Adawlut to eighteen months' solitary imprisonment.—Fatima's case..... 37

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2. In a case where a Mhar was charged with administering poison to cattle, it was held, that proof of the mere facts of his administering a certain substance, and of the cattle dying shortly afterwards, was insufficient for a conviction, without evidence of the nature of the substance administered.—Pundoo Wullud Bappoo's case..... 261

Political Agents.

Vide Intepretation, No. 1.

Post Office.

The prisoner was fined Rupees 50 for defrauding the Post Office, by enclosing a private letter in a package attested to contain nothing but Law papers. Ruled by the Sudder Foujdaree Adawlut, that as the penalty for this offence, specified in Act XVII. of 1837, was positive, no smaller fine than Rupees 50 could be awarded under its provision. —Pandoorung Vishwanath's case..... 162

Practice.

1. The Sudder Foujdaree Adawlut may in a case referred annul an illegal sentence, and pass a final legal one.—Amba's case..... 4

2. In all cases where prisoners are sentenced to suffer death, it is required by the Regulations and by the practice of all criminal courts, to set forth and specify the mode in which death is to be inflicted, both in the sentence and in the warrant for carrying the same into execution.—Venkoo Wullud Hurjee's case..... 8

3. It is the practice of the Sudder Foujdaree Adawlut to return a case to the Zilla Court for additional evidence, when such course is deemed necessary..... 17

4. It is irregular for Judicial or Magisterial authorities to connect themselves in any way with informers, especially in cases which may come under their own cognizance, although the motives are the detection of crime, and a desire to further the ends of public justice. In a case of Forgery discovered by such means, the practice was condemned by the Sudder Foujdaree Adawlut as highly objectionable.—Bappoojee Luxumon Sonee's case..... 19

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5. Held by the Sudder Foujdaree Adawlut, that it is irregular and highly objectionable in a Session Judge to interrogate a prisoner on his defence, at his trial, with a view to conviction.—The case of Hoosenee and another 24

6. It is opposed to practice and the orders of the Court of Directors to place any large number of prisoners on their trial without a prior reference to Government for sanction.—Gunnah Pyah's case 46

7. When a Session Judge meets with a case which from doubt in the application of the Law, or other sufficient cause, he may consider expedient to be decided by the Court of Sudder Foujdaree Adawlut, it is irregular to submit the same without recording a finding against the prisoner; and in a case where this irregularity of procedure was noticed by the Sudder Foujdaree Adawlut, the case was returned to the Session Judge to complete his record to the extent required by Regulation XIII. Section XXII. Clause 2, of 1827.—Lukkria Wullud Jakkojee Bheel's case. 55

8. It is irregular for a Session Judge to refer a case to a Native Law Officer for a formal opinion on the weight of the evidence, Sec. VIII. of Reg. VIII. of 1831, merely contemplating, that the Court should avail itself of the Law Officer's opinion upon an isolated point of Law or Custom. The peculiar functions of the Law Officers being to expound the Law.—Moodka bin Murribussappa's case 83

9. This case of murder was referred back by the Sudder Foujdaree Adawlut to the Session Judge for additional evidence, and thereon a final sentence of imprisonment for life was passed.—Jalum Ramsing's case 107

10. It is the practice of the Court to receive a Merchant's books of accounts as evidence in his own favor.—Dajee Wullud Yemajee's case .. 124

11. It is not competent to an Assistant Session Judge to submit a case for the confirmation of the Sudder Foujdaree Adawlut with the letter required by Clause 2, Section XXIII. Regulation XIII. of 1827, it being therein enacted, that every such case shall be accompanied by a letter from the Session Judge, containing any remarks, explanation, or opinion, which the Session Judge may consider it expedient to introduce.—Wittoo Wullud Bappoo's case. 141

12. Held by the Sudder Foujdaree Adawlut, that it was very desirable to complete a case of murder without any adjournment during the trial, unless to obtain time for consideration before passing sentence.—Eera bin Chennappa's case 170

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13. According to practice, whenever any weapon or other article is produced at a trial, its connexion with the case, and the place where it was found, should be clearly set forth on the record.—Appa Wullud Ballajee's case..... 174

14. In this case the trying authority entertaining doubts whether the facts as set forth in the evidence amounted to Treason, submitted his doubts to the Court of Sudder Foujdaree Adawlut, without recording a finding against the prisoner. The Court held this proceeding to be irregular, and therefore returned the case to the trying authority to complete his record to the extent required by Cl. 2, Sec. XXII. Reg. XIII. of 1827..... 268

Vide CONFESSIONS, Nos. 1, 2, & 3; COMMUTATION, No. 1; PROCEDURE, Nos. 1, 2, & 3; REGULATION, Nos. 1 & 5.

PREGNANCY.

In this case a rule was laid down for the better examination of women pleading pregnancy, when sentenced to death. And it was also determined, that the execution of a woman sentenced capitally, when pregnant, was to be deferred until forty days after delivery.—Mukowa's case..... 113

PRESUMPTIVE EVIDENCE.

1. The possession of stolen property by a prisoner at a period four years after a robbery, not presumptive evidence of his having committed the robbery—Suntram urf Jeram bin Sidgun's case..... 1

2. The female prisoner convicted of the murder of her husband, on the violent presumptions of the case. It being proved, that she was found alone in her house with the corpse of her husband, on the morning of the 26th of September 1838; that the house had only one door, which was fastened inside, and that the wounds on the body of the deceased were of such a nature that they could not have been self-inflicted. Sentence, imprisonment for life.—Bajee's case..... 128

3. Rules for admitting presumptive evidence.—Vide Note..... 221

Vide CIRCUMSTANTIAL EVIDENCE, Nos. 1 & 2.

PRINCIPAL AND ACCESSARY.

1. Convictions against accessaries charged with concealment after the

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fact punishable, although no conviction has been recorded against the principal.—Veergur Sumboogur and another's case..... 147

2. In this case of murder, the principal escaped, but the accessary was brought to trial, and convicted, and sentenced by the Session Judge. The Court of Sudder Foujdaree Adawlut confirmed the sentence of the Session Judge, but remarked that the better course would have been to have postponed the trial, and to have offered a reward for the apprehension of the principal.—Ooma Kome Mahadoo's case..... 169

3. Convictions of instigating punishable, although no conviction has been recorded against the principal.—Puddee's case..... 218

4. Although, in certain cases, convictions may be had against the concealer and aider in murder, when no conviction has been recorded against the principal, yet as long as a hope can be entertained of apprehending the principal, and the Law allows it, it is preferable to postpone the arraignment of the concealer or aider.—Toteya bin Rachya's case..... 219

Privileged Communications.

It was ruled in this case, that a Roman Catholic Priest could not be compelled, under Clause 4, Section XXXVI. Regulation XIII. of 1827, to make disclosures of death-bed confessions, communicated to him in his priestly capacity of confessor.—Alice, Fernanda and others, case of..... 99

Procedure.

1. It is unnecessary, on a prisoner pleading *guilty*, and confirming before a Session Court his confession made before a Magistrate, to swear the witnesses again to their former depositions. The Regulations simply requiring the evidence in the case (or such part of it taken before any competent authority as, if admitted to be true, would prove the charge) to be read over to him. Regulation XIII. Section XXXVII. Clause 2, of 1827.—The case of Ballajee bin Suddoo Aweer 3

2. If a prisoner before a Court of Session plead *not guilty*, it is irregular to cause the depositions made by witnesses before a Magistrate to be recorded as evidence against the prisoner, on the declarants being resworn, and confirming the same before that Court. The proper course of procedure being to take and record every oral declaration *de novo*, direct from the declarant.—Johra Kome Babnya's case..... 16

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3. All trials before Session Judges are to be conducted agreeably to the forms prescribed for Courts of Circuit in Chapter III. of Regulation XIII. of 1827.—Wittoojee bin Rugshette and others, case of..... 52

4. When a Session Judge meets with a case which from doubt in the application of the Law, or other sufficient cause, he may consider expedient to be decided by the Court of Sudder Foujdaree Adawlut, it is irregular to submit the same without recording a finding against the prisoner; and in a case where this irregularity of procedure was noticed by the Sudder Foujdaree Adawlut, the case was returned to the Session Judge to complete his record to the extent required by Regulation XIII. Section XXII. Clause 2, of 1827.—Lukkria Wullud Jakkojee Bheel's case..... 55

5. It is irregular for a Session Judge to refer a case to a Native Law Officer for a formal opinion on the weight of the evidence, Section VIII. of Regulation VIII. of 1831 merely contemplating, that the Court should avail itself of the Law Officer's opinion upon an isolated point of Law or Custom. The peculiar functions of the Law Officer being to expound the Laws.—Moodka bin Murribussappa's case.... 83

6. In all criminal cases the prisoner should be asked if he has any witnesses to call in his defence, and the question and reply should be entered on the record.—Bussia bin Baluppa's case..... 88

7. The mode of procedure to be adopted in rendering the deposition of a defunct witness legal evidence, shewn.—Puddoo bin Bappoojee Neermul's case..... 231

8. In this case the trying authority entertaining doubts whether the facts as set forth in the evidence amounted to Treason, submitted his doubts to the Court of Sudder Foujdaree Adawlut, without recording a finding against the prisoner. The Court held this proceeding to be irregular, and therefore returned the case to the trying authority to complete his record to the extent required by Cl. 2, Sec. XXII. Regulation XIII. of 1827..... 268

PROCEEDINGS.

1. All trials before Session Judges are to be conducted agreeably to the forms prescribed for Courts of Circuit, in Chapter III. of Regulation XIII. of 1827.—Wittoojee Rugshette and others, case of..... 52

2. In all criminal cases the prisoner should be asked if he has any wit-

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nesses to call in his defence, and the question and reply should be entered on the record.—Bussia bin Baluppa's case..... 88

8. The summary disposal of a criminal case without keeping a record of the proceedings, where the punishment awarded exceeds the limitation of Section XIV. Regulation XII. of 1827, held by the Sudder Foujdaree Adawlut to be illegal.—Damojee Kosajee and others, case of 110

4. Whenever any weapon or other article is produced at a trial, its connexion with the case and the place where it was found should be clearly set forth on the record.—Appa Wullud Ballajee and others, case of..... 174

PROMISES.

1. It appeared that one of the prisoners in this case had been induced, by persons wholly unauthorized, to confess to the crime of gang robbery with murder, under promises of pardon. Held by the Sudder Foujdaree Adawlut, that a confession so taken could not be received as evidence against the prisoner, and in the absence of other proof, the Court acquitted him.—The case of Purthum Hurya and three others..... 28

2. In this case the prisoner was induced to give information against a gang of robbers, of which he was a member, under hopes and promises of pardon and reward, held out to him by the Patells of a village which had been lately plundered by the gang. It was ruled by the Sudder Foujdaree Adawlut, that any subsequent confession made by the prisoner in consequence of such hopes and promises, was inadmissible, and that the prisoner must be acquitted.—Mota Bhaosing's case..... 30

3. It appearing that one of the prisoners in this case had been induced to confess to the crime of gang robbery, under a promise of pardon unauthorizedly given, the Sudder Foujdaree Adawlut held, that a confession so obtained was not admissible in evidence against the prisoner, and in the absence of other proof he was acquitted.—Kusla Jeejee and others, case of..... 191

PUNISHMENTS.

1. The punishments for murder are, death, transportation, imprisonment

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for life, or solitary imprisonment with flogging, and no other.—Amba's case..... 4

2. A prisoner who was convicted of two gang robberies under very extenuating circumstances, was sentenced to be imprisoned for the nominal period of one day.—Oomajeerow's case..... 85

3. *Vide* SENTENCE, *passim*.

RAPE.

1. The prisoner, on being arraigned on a charge of having ravished and carnally known and abused an infant of nine years of age, set up a defence that the child consented to his committing the act, whereupon it was held by the Sudder Foujdaree Adawlut, that the consent of a child of such tender years was immaterial, and the prisoner on the evidence adduced was sentenced to be imprisoned and kept to hard labour for the term of fourteen years, and to be twice flogged.—Hussha Wullud Yeshnack's case..... 13

2. The evidence necessary to support an indictment for Rape.—Hussha Wullud Yeshnack's case, Note to..... 14

REGULATIONS.

1. The Regulation under which a prisoner is sentenced, always to be quoted.—The case of Suntram urf Jeram bin Sidgun..... 1

2. The prisoner convicted of child murder, and sentenced by the Session Judge to imprisonment for fourteen years with labour and disgrace; this sentence annulled by the Sudder Foujdaree Adawlut, on the ground that it was contrary to law to award a punishment for murder not laid down in Clause 4, Section XXVI. of Regulation XIV. of 1827; which was positive, and a final sentence of two years' solitary imprisonment was passed by the Court.—The case of Amba..... 4

3. In all cases where prisoners are sentenced to suffer death, it is required by the Regulations and by the practice of all criminal courts, to set forth and specify the mode in which death is to be inflicted, both in

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the sentence and in the warrant for carrying the same into execution.—Venkoo Vullud Hurjee's case..... 8

4. When a Session Judge meets with a case which from doubt in the application of the Law, or other sufficient cause, he may consider expedient to be decided by the Court of Sudder Foujdaree Adawlut, it is irregular to submit the same without recording a finding against the prisoner; and in a case where this irregularity of procedure was noticed by the Sudder Foujdaree Adawlut, the case was returned to the Session Judge to complete his record to the extent required by Regulation XIII. Section XXII. Clause 2, of 1827.—Lukkria Wullud Jakkojee Bheel's case..... 55

5. In this case it was held by the Sudder Foujdaree Adawlut, that Clause 1, Section VII. of Regulation XIV. of 1827, did not confer upon the trying authority the power of commuting a sentence of death to imprisonment for life, such power being reserved for the superior tribunal before which the case must come for confirmation.—Mahadoo bin Kasseeba's case..... 57

6. Instructions regarding the due promulgation of the Regulations.—Yemajee's case..... 71

7. The summary disposal of a criminal case without keeping a record of the proceedings, where the punishment awarded exceeds the limitation of Section XIV. Regulation XII. of 1827, held by the Sudder Foujdaree Adawlut to be illegal.—The case of Damojee Kosajee and others. 110

8. The corroboration required by the Regulations to render the testimony of an accomplice worthy of credit exemplified.—Babjia and others, case of..... 156

9. The provisions of Regulation XXII. of 1827, are not applicable to all residents in Military Camps, but to those only belonging to or connected with the Bombay Army.—Bernard Peaform's case..... 266

10. *Vide* ASSISTANT SESSION JUDGES, No. 2; COINING, No. 3; CONFESSIONS, No. 5; COMMUTATION, No. 1; ESCAPES, No. 1; INTERPRETATIONS, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10; MURDER, No. 3; PROCEDURE, No. 8; SENTENCES, No. 11.

REVENUE OFFENCES.

The Village Revenue Officers of any Surunjam village within the zillahs of the Bombay Presidency, when there is no special engagement to the

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contrary, are liable to the ordinary criminal courts for Revenue offences.—Rowjee Wullud Abbajee and others, case of..... 117

ROBBERY.

1. The possession of stolen property by a prisoner at a period four years after a robbery, not presumptive evidence of his having committed the robbery.—Suntram urf Jeram bin Sidgun..... 1

2. A Hindoo husband cannot be convicted of robbing his wife,—the wife according to Hindoo Law being completely under the controul of her husband; but a dispute between them regarding their property should be determined by a Civil Action..... 259

3. In this case two prisoners in the prosecution of a robbery inflicted a wound on a third party, which rendered a surgical operation necessary, and consequent upon that operation the patient died. Ruled by the Sudder Foujdaree Adawlut, that this was murder.—Suntoo Wullud Heybutrow and another, case of..... 262

ROMAN CATHOLIC PRIEST.

1. In this case a girl of fifteen years of age, born of a Portuguese mistress kept by a Parsee, was about to marry a Parsee, with the consent of her parents, when a Roman Catholic Priest petitioned the Session Judge to prevent the marriage, and claimed the guardianship of the girl, until she arrived at a more mature age, on the grounds of the girl having been baptized. It was held by the Sudder Foujdaree Adawlut, with the advice of the Advocate General, that the girl having obtained womanhood, was entitled to marry whom she pleased, and that she should also be allowed to reside with her parents if she wished so to do.—Marrianne Pepin and another, case of..... 72

2. It was ruled in this case, that a Roman Catholic Priest could not be compelled, under Clause 4, Section XXXVI. Regulation XIII. of 1827, to make disclosures of death-bed confessions, communicated to him in his priestly capacity of confessor.—Alice Fernanda and others, case of. 99

SECURITY.

1. Ruled, that if there was not sufficient evidence for the conviction of a party charged with an offence, he could not be required, under the pro-

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visions of Sections XXV. and XXVII. of Regulation XII. of 1827, to furnish security for his appearance.—The case of Nunnee and another: 115

SELF-IMMOLATION.

Vide SUTTEE.

SENTENCES.

1. In all cases where prisoners are sentenced to suffer death, it is required by the Regulations, and by the practice of all criminal courts, to set forth and specify the mode in which death is to be inflicted, both in the sentence and in the warrant for carrying the same into execution.—Venkoo Vullud Hurjee's case..... 8

2. Held by the Sudder Foujdaree Adawlut, that a sentence of death having been passed by a Session Judge, the directing the execution to be carried into effect with the additional marks of public disgrace specified in Clauses 2, 3, and 4, Section IV. Regulation XIV. of 1827, was no enhancement of the punishment, and therefore might be added at the discretion of the Sudder Court.—The case of Gunnah Pyah and others.—Vide Act. II. of 1849, which abolishes disgrace as a punishment..... 50

3. The term of imprisonment in every sentence must be definite—Hurrya's case..... 51

4. In a case where certain prisoners were sentenced to a longer continuous term of imprisonment than fourteen years, not in commutation for a sentence of death, such sentences were ruled by the Sudder Foujdaree Adawlut to be illegal, as Clause 1, Section VII. of Regulation XIV. of 1827, declared that imprisonment shall not be adjudged for a longer period than fourteen years, except that ordinary imprisonment for life may be substituted as a commutation for a sentence of death, and then by Act XIV. of 1844, the prisoner may be transported for life.—The case of Dowlutta Wullud Bappoo, and 18 others..... 64

5. In this case it was declared, that the provisions of Article XI. of 1840 do not authorize a sentence of solitary imprisonment uncombined with imprisonment with hard labor, in cases where the punishment of solitary imprisonment is not prescribed by the general Regulations for the offence committed.—Gunnoo bin Mahadeo's case..... 153

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SENTENCE, QUESTION OF.

1. The principal convicted of murder, and sentenced to death; the accessary, to one year of solitary imprisonment.—The case of Hooseenee and another..... 25

2. The crime of Infanticide punished with two years of solitary imprisonment—Amba's case..... 4

3. The crime of a mother murdering her infant at its birth, punished by two years' solitary imprisonment.—Baee Muthee's case..... 32

4. Forging and uttering a note or order with a fraudulent intent, punished with public disgrace and two years' imprisonment with labor.—The case of Babunshette Poondlickshette,..... 34

5. Three prisoners being convicted of stealing a female child, two were sentenced to three years' imprisonment with hard labor, and the third under mitigating circumstances (age and infirmity) to one year of ordinary imprisonment.—The case of Luximon bin Ballajee and others. 35

6. The prisoner convicted of an attempt to poison her husband, and sentenced by the Session Judge to suffer ten years' imprisonment, which sentence was, in consideration of her age, sixteen years, mitigated by the Sudder Foujdaree Adawlut to eighteen months' solitary imprisonment.—Fatima's case..... 37

7. A prisoner convicted of a deliberate attempt to murder his mistress, sentenced to imprisonment for life.—Mahadeo Kasseeba's case..... 57

8. Three prisoners punished capitally for aiding and abetting in murder, under circumstances of great cruelty and aggravation.—Gunnah Pyah's case..... 45

9. Five prisoners having been tried and convicted on a charge of Highway Robbery perpetrated on three Wanees, two of whom they afterwards murdered under circumstances of great deliberation and cruelty, were one and all sentenced to death.—Jehan Khan and others, case of..... 76

10. The prisoner, in this case, was convicted of two gang robberies, one committed twelve, and the other five, years previously to his trial, but having since led a reformed life, and become a peaceable cultivator of

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the soil, and carried a good character among his fellow villagers, he was sentenced by the Sudder Foujdaree Adawlut, to be imprisoned for the nominal period of one day, and to furnish security.—Oomajeerow bin Donedabarow's case..... 85

11. The prisoner, a woman of the Kamatee caste, was tried for murdering a child under circumstances of great atrocity, and on conviction, was sentenced to death; the Court of Sudder Foujdaree Adawlut holding, that the prisoner was not entitled to the benefit of Clause 5, Section IV. of Regulation XIV. of 1827.—Luxumee, wife of Juggunauth, case of..... 87

12. In this case the sentences of death passed by the Session Judge on two prisoners for gang robbery with murder were mitigated by the Sudder Foujdaree Adawlut to transportation for life, in consideration of three other persons having suffered capitally for the same offence.—The case of Bunna Veera, and nine others..... 92

13. The prisoner, a Brahmin, convicted of murdering a Brahmin, under circumstances of great atrosity, and sentenced to death.—Mahnishwur Bhanjee's case..... 97

14. Two prisoners convicted of concealment of murder after the fact, and sentenced to transportation for life.—Veergur Sumboogur and another, case of..... 147

15. The prevalence of gang robberies within any particular district, held to be a circumstance of aggravation, and a matter deserving of weight in passing sentence.—Babjia and others, case of..... 156

16. A sentence of death and confiscation of property passed on a prisoner for Treason, mitigated to ten years' imprisonment, on the ground of his having been so severely wounded at the time of his apprehension, as to render him a cripple.—Hurree bin Baboo's case..... 251

17. *Vide* AFFRAYS, No. 1; ESCAPES, No. 3; MURDER, Nos. 7 & 11.

SESSION JUDGES.

All trials before Session Judges are to be conducted agreeably to the forms prescribed for Courts of Circuit in Chapter III. of Regulation XIII. of 1827.—The case of Wittoojee Rugshette, and 13 others.... 52

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2. When a Session Judge meets with a case, which, from doubt in the application of the Law or other sufficient cause, he may consider expedient to be decided by the Court of Foujdaree Adawlut, it is irregular to submit the same without recording a finding against the prisoner; and in a case where this irregularity of procedure was noticed by the Sudder Foujdaree Adawlut, the case was returned to the Session Judge to complete his record to the extent required by Regulation XIII. Section XXII. Clause 2, of 1827.—Lukkria Wullud Jakkojee Bheel's case..... 55

3. It is irregular for a Session Judge to refer a case to a Native Law Officer for a formal opinion on the weight of the evidence, Section VIII. of Regulation VIII. of 1831, merely contemplating, that the Court should avail itself of the Law Officer's opinion upon an isolated point of law or custom; the peculiar functions of the Law Officers being to expound the Law.—Moodka bin Murribussappa's case..... 83

4. It is not competent to an Assistant Session Judge to submit a case for the confirmation of the Sudder Foujdaree Adawlut with the letter required by Clause 2, Section XXIII. Regulation XIII. of 1827, it being therein enacted, that every such case shall be accompanied by a letter from the Session Judge, containing any remarks, explanation, or opinion, which the Session Judge may consider it expedient to introduce.—Wittoo Wullud Bappoo's case..... 141

Solitary Imprisonment.

In this case it was declared, that the provisions of Act XI. of 1840 do not authorize a sentence of solitary imprisonment uncombined with imprisonment with hard labor, in cases where the punishment of solitary imprisonment is not prescribed by the General Regulations for the offence committed.—Gunnoo bin Mahadeo's case..... 153

Sorcery.

Vide Witchcraft, Nos. 1, 2, & 3.

Sudder Adawlut.

1. Power of the Sudder Foujdaree Adawlut to alter the finding of a Session Judge, when the offence brought in being of the same nature is of a

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less degree than that set out in the original charge.—Nagojee Gaodjee's case..... 26

2. By a rule of the Court, dated the 19th of January 1846, no Interpretation or Circular Order can be passed by the Sudder Foujdaree Adawlut, without the concurrent voices of three of the Judges; and by a subsequent rule of the Court, the four Puisne Judges, or the Chief Judge and three Puisne Judges, must record their opinions, previously to the promulgation of any Interpretation or Circular Order.—Vide Note to page..... 267

Surgical Operations.

In this case, two prisoners, in the prosecution of a Robbery, inflicted a wound on a third party, which rendered a surgical operation necessary, and consequent upon that operation the patient died. Ruled by the Sudder Foujdaree Adawlut, that this was murder.—Suntoo Wullud Hybutrow and another, case of..... 262

Surunjam.

The village Revenue Officers of any Surunjam village, within the Zillahs of the Bombay Presidency, when there is no special engagement to the contrary, are liable to the ordinary Criminal Courts for Revenue offences.—The case of Rowjee Wullud Abbajee, and others..... 117

Suttee.

1. The prisoners in this case were the first tried for aiding at a Suttee, after the passing of Regulation XVI. of 1830. On the trial, the prisoners set up a defence of ignorance of the Law, and proved that owing to the negligence of the Mamlutdar of Chickodee (in which district the offence was committed), Regulation XVI. of 1830 had never been duly promulgated. On these grounds, the prisoners were recommended by the Sudder Foujdaree Adawlut to Government for pardon, but Government, under all the circumstances of the case, withheld its sanction to the pardon recommended.—The case of Yemajee bin Suddasheo, and three others..... 66

2. Rules for the prevention and punishment of the crime of Suttee. Vide Court's Circular Orders, Nos. 48 and 49 of the printed collection.

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THUGGEE.

In this case a gang of fi organized Thugs issued from their haunts among the independent states of Bundlecund, and made an expedition into the Honorable Company's territories in Khandeish, where they committed four highway robberies, murdered seventeen persons, and robbed them of property valued at upwards of Rs. 20,000. On their return to Hindoostan, seven of the gang were apprehended by the Magistrate of Mynpooree, and forwarded to Dhoolia, where one prisoner died in jail, and the remaining six were tried, convicted, and sentenced to death, by the Session Judge. The sentences of four of these prisoners received the confirmation of the Sudder Foujdaree Adawlut, and those of the remaining two were mitigated to transportation for life, in consideration of the age of the prisoners, eighteen and twenty years respectively.—The case of Kumblee wullud Hybuttee and five others..... 39

TRANSPORTATION, RETURN FROM.

A prisoner who had been sentenced by the Political Agent at Sawunt Warree, under the orders of the Honorable the Governor in Council of Bombay, to be transported for life, returned from transportation without a pardon, and upon being apprehended, he was tried by the Session Judge of the Konkun, and again sentenced to be transported. Held by the Sudder Foujdaree Adawlut, that this latter sentence was illegal, the Session Court never having had jurisdiction in the matter, and the authority by whom the original sentence was passed not being recognized in the Code of Regulations.—Gharroo Bin Dewjee's case.. 139

TREASON.

1. In a case where four prisoners were tried for Treason, three were convicted on the clear and positive testimony of two pardoned accomplices, supported by other corroborative evidence, and the admissions of the three prisoners themselves, and it was held in regard to the fourth, who denied the charge, that since the truth of the evidence of the accomplices had been unequivocally established with respect to the other three prisoners, its veracity might be justly presumed against the fourth, who was accordingly convicted and sentenced to death.—Bhowkeng and three others, case of..... 240

2. In this case 15 prisoners were charged with Treason, in having joined a body of armed insurgents raised and employed to make war against

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the Rajah of Kolapoor, and his allies the British Government of Bombay; in having attacked and plundered the town of Chickodee, situated within the British territory; in having taken formal possession of the said town in the name of one Chimma Sahib, whom the insurgents wished to set up on the throne of Kolapoor, in opposition to the authority of their lawful Prince, and of the British Government. On conviction, one of these prisoners was sentenced to death, six to transportation for life, and the rest to imprisonment with hard labour for fourteen years.—Jewun Row bin Ramcunder Row, Ghorepuday, and others, case of..... 244

3. A sentence of death and confiscation of property, passed on the prisoner in this case on conviction of Treason, was mitigated, at the recommendation of the Sudder Foujdaree Adawlut, by the Hon'ble the Governor in Council, to a term of ten years' imprisonment, on the ground of the prisoner's having been so severely wounded at the time of his apprehension as to render him a cripple.—Hurree bin Baboo's case..... 251

4. In this case the trying authority entertaining doubts whether the facts as set forth in the evidence amounted to Treason, submitted his doubts to the Court of Sudder Foujdaree Adawlut, without recording a finding against the prisoner. The Court held this proceeding to be irregular, and therefore returned the case to the trying authority to complete his record to the extent required by Cl. 2, Sec. XXII. Reg. XIII. of 1827..... 268

TRIALS.

1. A large number of prisoners not to be put on their trial without a prior reference to Government for sanction.—Gunnah Pyah's case. 46

2. All trials before Session Judges are to be conducted agreeably to the forms prescribed for Courts of Circuit in Chapter III. of Regulation XIII. of 1827.—Wittoojee Rugshette and thirteen others, case of.... 52

3. In all trials for perjury, although the Code of Regulations of 1827 does not explicitly require that perjured evidence shall be material to any matter in issue, yet it is desirable to state on the record the nature of the proceedings in which the perjury was committed, and by what authority the false evidence was taken, and how far it was likely to affect the matter in issue.—Pulsoo bin Shabajee's case..... 78

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4. In all criminal trials, the prisoner should be asked, if he has any witnesses to call in his defence, and the question and reply should be entered on the record.—Bussia bin Balappa's case. 88

5. Trials of escapes from custody cannot be held before Assistant Session Judges nor Magistrates, but only before Session Judges.—Lalla Antaram's case 93

6. Held by the Sudder Foujdaree Adawlut, that it was very desirable to complete a case of murder without any adjournment during the trial, unless to obtain time for consideration before passing sentence.—Eera bin Chenappa's case. 170

WARRANTS.

1. Death warrants should always set forth and specify the mode in which death is to be inflicted.—Venkoo's case 8

2. Warrants of former convictions not to be brought forward as evidence for the prosecution, but after conviction, due weight is to be given to them in awarding punishment.—Hur Patell bin Chind Patell's case 255

WITCHCRAFT.

1. The prisoners in this case were convicted of the murder of one Sintree, whom they suspected of practising witchcraft, and were sentenced by the Court of Sessions to be imprisoned for life. The Court of Sudder Foujdaree Adawlut, taking into consideration the gross ignorance and superstition displayed by the prisoners, and the uncivilized state of the country in which the crime was committed, admitted the belief that sorcery was practised by the deceased as a palliation of the crime, and on this ground recommended the prisoners to the merciful consideration of Government, with a view to a mitigation of the sentences awarded at the requisition of the Law. This recommendation received the sanction of Government, and mitigated sentences were passed. —The case of Lohanoo Tamboor, Bheel, and two others 5

2. In a case where one hundred and fifty-nine prisoners were tried for the murder of a person supposed to practise sorcery, twelve were

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convicted by the Session Judge of murder, and seventy-three of instigating and aiding in the offence, and the whole eighty-five were sentenced to death; the remaining seventy-four prisoners were acquitted. Held by the Sudder Foujdaree Adawlut, that in consideration of the gross superstition displayed in this case, it was unnecessary to confirm so severe a sentence on so many deluded beings. The Court therefore selected three prisoners, whom they considered the most culpable, and confirmed the sentence of death passed upon them. The Court also selected four other prisoners, and sentenced them, one to transportation for life, and the other three to two years' solitary imprisonment with flogging, and the remaining prisoners were recommended to Government for pardon.—The case of Gunnah Pyah, and 158 others 45

3. The prisoners in this case were convicted of the murder of one Dewlee, a supposed witch, and sentenced by the Session Judge to transportation for life.—The Court of Sudder Foujdaree Adawlut confirmed the conviction, but recommended these prisoners to Government as objects deserving of mercy, on the grounds of the gross ignorance and superstition by which they had been influenced, and proposed mitigated sentences, which were finally sanctioned by Government.—Ramjee Wullud Roopya, and another, case of 201

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